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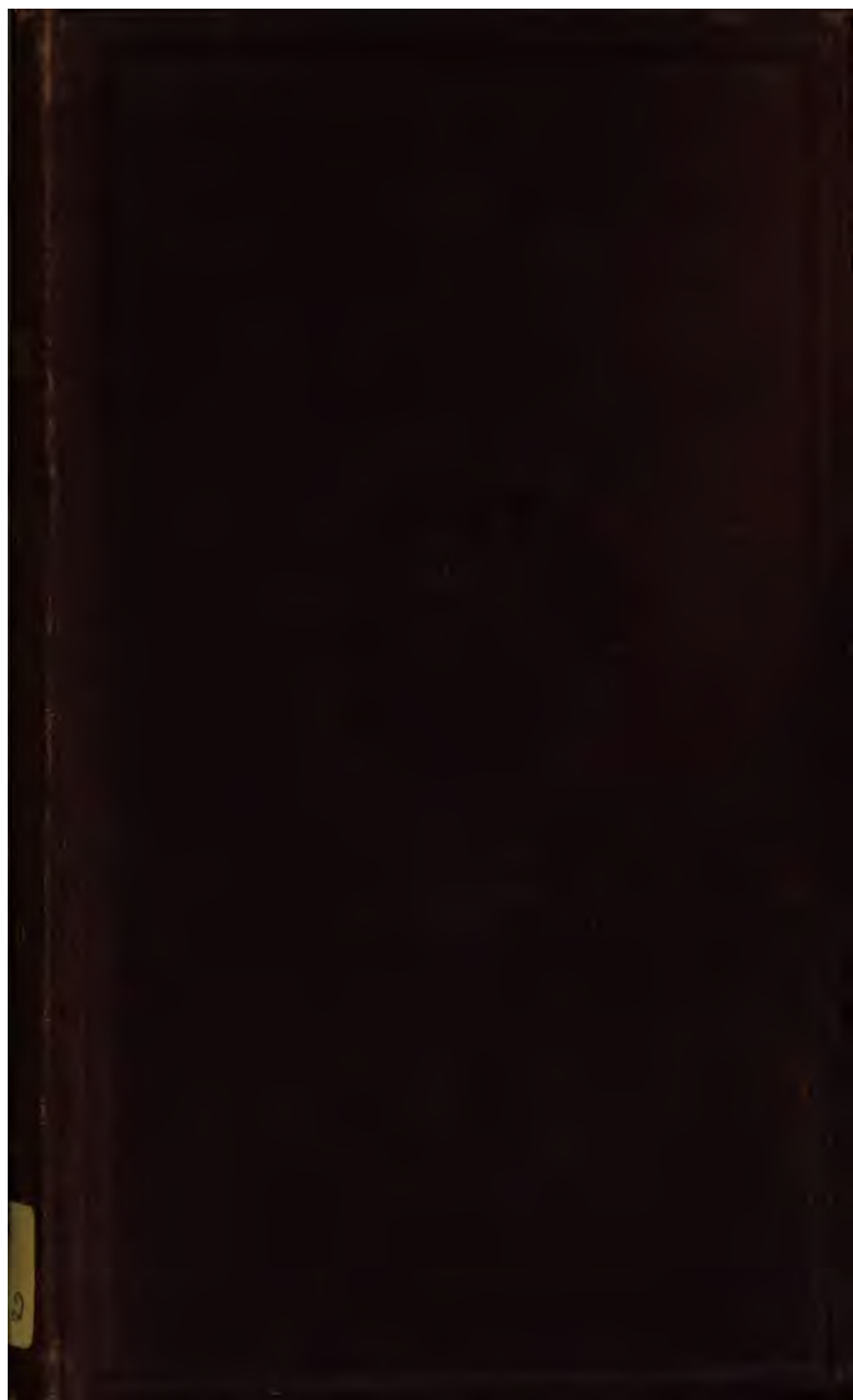
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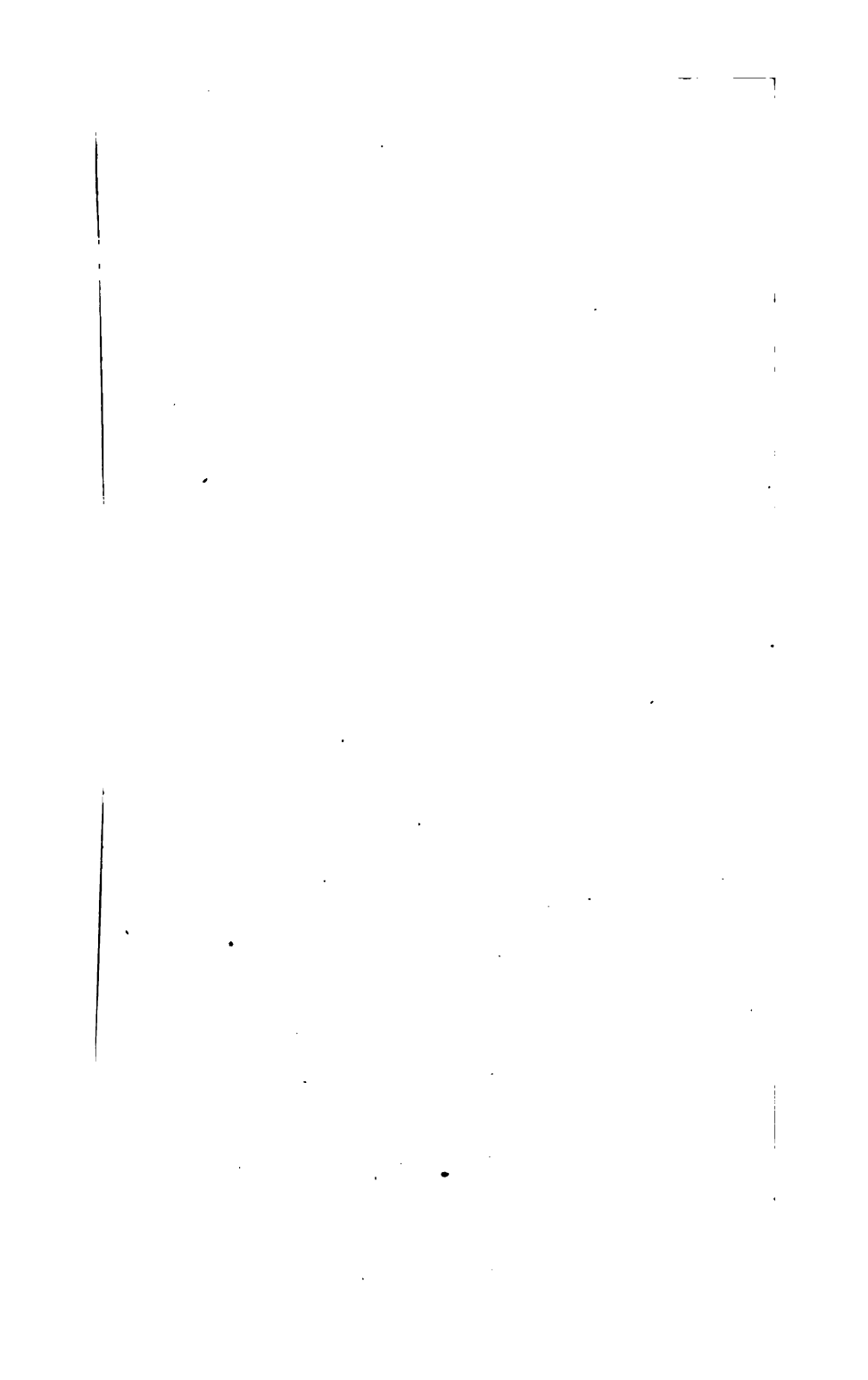


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THE  
**Town Councillors' Manual,**  
OR,  
GUIDE TO THE DUTIES  
OF  
**Municipal Corporations;**

WITH APPENDIX OF FORMS.

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BY SAMUEL STONE,  
Town Clerk of Leicester,  
AND AUTHOR OF THE JUSTICES' MANUAL.

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REVISED EDITION.

*" Ut sua propria melius defendere possint, et magis integrè  
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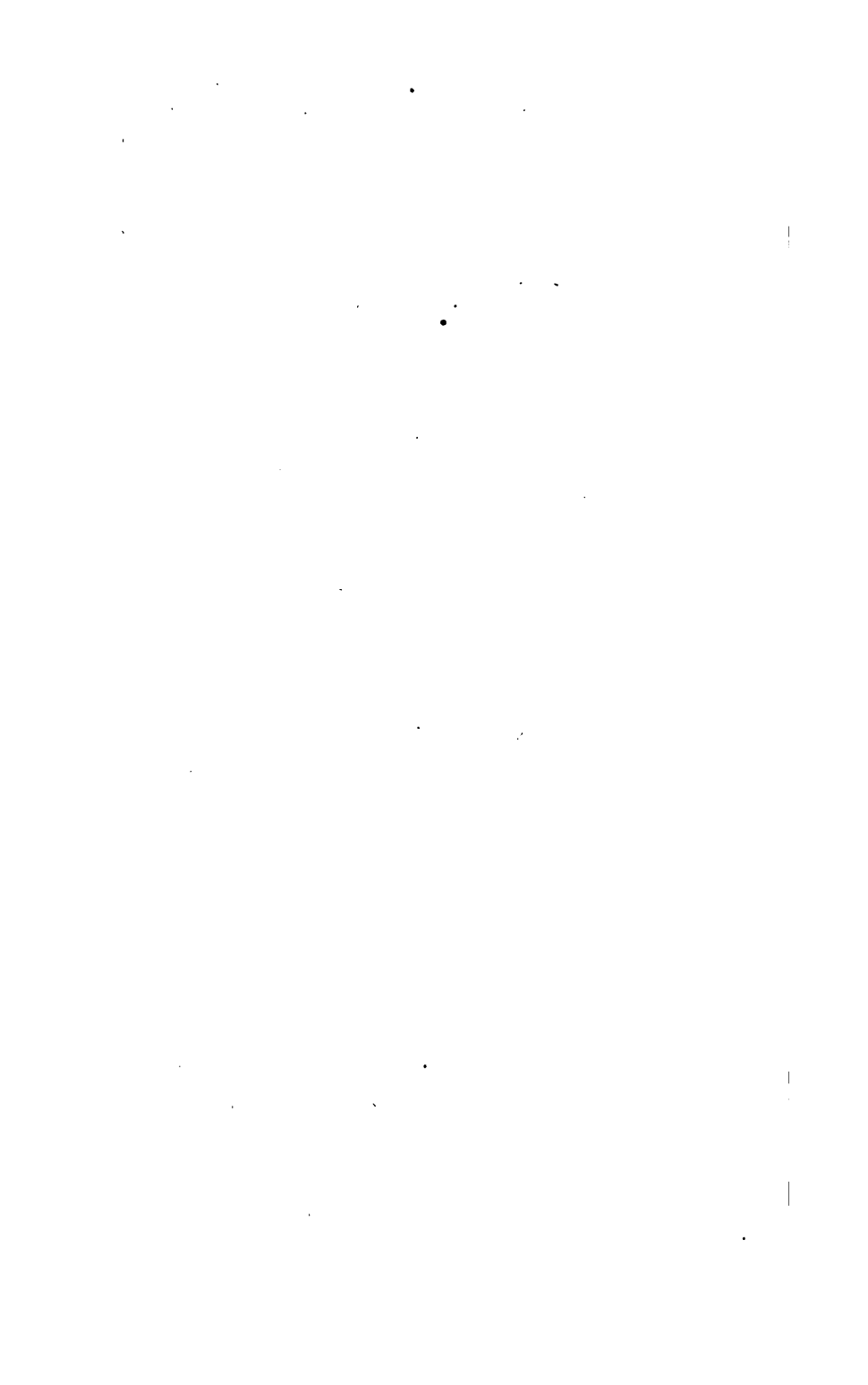
TO  
*The Mayor,*  
ALDERMEN, AND COUNCILLORS,  
OF THE  
*Borough of Leicester,*

THIS MANUAL

IS RESPECTFULLY DEDICATED BY

THE AUTHOR,

IN GRATEFUL ACKNOWLEDGMENT OF THEIR  
UNIFORM COURTESY AND UNINTERRUPTED CONFIDENCE  
FOR MORE THAN THIRTY-THREE YEARS,  
DURING WHICH HE HAS HELD THE OFFICE OF TOWN CLERK  
FOR THE BOROUGH OF LEICESTER.



## PREFACE TO REVISED EDITION.

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There having been several statutes and decisions of the superior courts affecting municipal corporations since the publication of this Manual, I have thought it desirable, instead of adding a supplement, to notice the alterations made by statute and the reported cases in the body of the work. I have done so by reprinting every page in which such alterations or cases ought to appear.

I have omitted the chapter on "The Workshop Regulation Act, 1867," (the duties of the council under that Act having been transferred to the Factory Inspectors by "The Factory and Workshop Act, 1870";) and I have substituted two chapters on "The Elementary Education Act, 1870," (so far as it affects corporations), and on the alteration of the wards of a borough.

I have prepared an Appendix of Forms relating to municipal elections, which will, I trust, increase the usefulness of this work.

SAMUEL STONE.

LEICESTER,

*November, 1871.*



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## PREFACE.

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THIS Work is intended to present a general view of the powers and duties of Town Councils and their Officers, extended or condensed according to the importance of the subject. The recent alterations in the law with respect to the qualifications of Burgesses and Councillors have rendered existing publications on the Law of Municipal Corporations comparatively useless.

I have endeavoured to give, in a practical and compendious form, the law relating to the various subjects which come under the consideration of Town Councils by virtue of the Municipal Corporations Act of 1835, or any statutes amending its provisions, and by the use of large type at the commencement of different paragraphs, to facilitate reference to the particular points on which information is desired.

I have taken a Treatise by T. J. Arnold, Esq., on the Law of Municipal Corporations, published in 1851, as the ground-work of this Manual. It is unnecessary to observe, that during the last eighteen years many statutes have been repealed and others been passed, materially affecting the mode of conducting municipal

elections, the regulation of gaols and lunatic asylums, the maintenance of free libraries and museums, the purchase of property for public purposes, and, by a recent statute, the municipal franchise; and that within the same period, there have been numerous decisions of the superior courts on the construction of the Municipal Corporations Acts, and on the duties and legal responsibilities of corporate bodies. A Work bringing down the law to the present time appeared to me to have become an important desideratum, and in endeavouring to supply a want, which I in common with others have frequently experienced, I have availed myself of the kind permission given by Mr. Arnold, and have made use of his Treatise to such an extent as the mode adopted by me in treating of the various branches of municipal law, and the numerous changes in the statute law which have taken place since the publication of his Work, would permit.

It has been suggested to me that I should embrace in this Work the laws administered by Town Councils in their capacity of Local Boards of Health, but I have been deterred from doing so by two considerations,—want of time to accomplish such an undertaking without interfering with official and professional duties, and the difficulty of condensing within the compass of a moderately sized Manual, the multifarious regulations of our sanitary code. I have been also influenced by the fact that a large portion of the duties of Local Boards of Health consists in carrying out local bye-laws and regulations, varying in almost every borough, and therefore unfit to form part of a Manual intended for general use.

I now submit this publication for the approval of all who are connected with the administration of municipal law, in the hope that it may be found simple in its arrangement, correct in its exposition, and of real practical utility.

SAMUEL STONE.

LEICESTER,

*September, 1869.*



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## **Periodical Business for Town Councils and Town Clerks.**

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### **January.**

**QUARTERLY RETURNS.**—On the first day of the months of January, April, July, and October (*a*), the watch committee are to transmit to the secretary of state a copy of all rules, orders, and regulations made by them or the council for the regulation and guidance of the constables or policemen of the borough. [5 & 6 Will. 4, ch. 76, s. 86.]

**TRUSTEES FOR SPECIAL PURPOSES.**—On the 1st day of this month, the council (in those boroughs where any such trustees are necessary) are to appoint a certain number of members of the council to exercise the duties of trustees for the purposes here mentioned. [5 & 6 Will. 4, ch. 76, s. 73.]

### **February.**

**PARLIAMENTARY REGISTER.**—On or before the 22nd day of this month the town-clerk is required to transmit a register of voters for the current year to the secretary of state. [31 & 32 Vict. ch. 58, s. 37.]

**BOROUGH ACCOUNTS.**—The council are to send an abstract of all monies received and paid within the preced-

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(*a*) That part of the 86th section which required a quarterly return of the number of men, their arms, &c., was repealed by 21 & 22 Vict. ch. 67, s. 2.

ing year, made up to the last period of audit, (*i. e.* the 1st day of September,) to the Secretary of State before the 1st day of March. [8 & 7 Will. 4, ch. 104, s. 10; amended by 1 Vict. ch. 78, s. 43.]

**MUNICIPAL ELECTIONS.**—The town-clerk must, seven days at least before the 1st day of March, publish notices of the election of auditors and assessors requesting nominations, as in the case of the election of councillors, and publish the nominations in like manner. [32 & 33 Vict. ch. 55, s. 6, extending the provisions of 22 Vict. ch. 35. *See* "OCTOBER."]

### March.

**MUNICIPAL ELECTIONS.**—Where, from the number of persons nominated exceeding the number to be elected as auditors or assessors, a poll is required, the elections are to be held on the 1st day of March, *i. e.* for two auditors and two assessors; (5 & 6 Will. 4, ch. 76, s. 37;) and in boroughs divided into wards, for two assessors for each ward; (*Id.* s. 43;) and for two assessors for revising the burgess lists with the mayor. (1 Vict. ch. 78, s. 4.) Give two days' public notice of the place of polling, in the event of a poll being required, previously to the 1st day of March. (5 & 6 Will. 1, ch. 76, s. 33.) Publish the result of the elections, whether there shall have been a poll or not. *See* "NOVEMBER."

**TREASURER'S AUDIT.**—On the 1st day of this month the mayor is to name a member of the council, who, together with the auditors this day elected, are to audit the accounts of the treasurer in the months of March and September. [5 & 6 Will. 4, ch. 76, s. 93.]

**HIGHWAYS.**—Town clerks are to transmit to the Secretary of State the annual account of the expenditure and receipts in respect of highways. [12 & 13 Vict. ch. 35, s. 1.]

### April.

**QUARTERLY RETURNS.**—*See* "JANUARY."

**June.**

**PARLIAMENTARY ELECTORS.**—The town-clerk is to cause a sufficient number of forms of precepts, notices, and lists to be printed, according to the forms required, and of the Table 1, Schedule D.; and on or before the 10th day of this month in every year, to make and cause to be delivered to the overseers of the poor of every parish, township, or place sharing in the election for such city or borough, a precept, as here required; and also a sufficient number of such printed forms of notices and lists and of the said table. [6 & 7 Vict. ch. 18, s. 10.]

**ANNUAL RETURNS.**—The clerk to any corporation or commissioners, or other persons authorized to levy rates under any local Act for paving, draining, cleansing, or watching, or the improvement or regulation of any town or district, or to levy rates under the Lighting and Watching Act of 3 & 4 Will. 4, ch. 90, or tolls under the authority of parliament in respect of markets, bridges, or harbours or church or chapel rates, or sewers rates, &c., must make a return to the Secretary of State, in June in every year, showing the sums levied or received and the expenditure thereof. [23 & 24 Vict. ch. 51, ss. 1, 2.]

**July.**

**QUARTERLY RETURNS.**—*See 'JANUARY.'*

**FREEMEN'S LISTS.**—On or before the last day of this month, the town-clerk is to make out, according to Form 5 in Schedule B., an alphabetical list of freemen entitled to vote at elections, with their places of abode, and sign such lists, and cause copies to be written or printed, and publish the same on or before the 1st day of August, and keep a copy for perusal gratis, and deliver copies at the price mentioned in Table 1, Schedule D. [6 & 7 Vict. ch. 18, s. 14.]

The notice is to be published by the town-clerk, by being fixed in some public and conspicuous situation on the outside

of the outer door or outer wall of the town-hall, or, if there be no such building, then in some public and conspicuous situation within the borough; (*Id.* s. 23;) and to continue so fixed for a period including two consecutive Sundays at the least, after the day on which the notice is required to be published; and if destroyed, mutilated, defaced, or removed, another notice is to be so fixed. (*Id.* s. 24.)

### August.

**FREEMEN'S LISTS.**—The town-clerk is to cause copies of the list of freemen entitled to vote at elections, as required to be made out on or before the last day of July, to be written or printed, and publish the same on or before the 1st day of this month, and keep a copy for perusal gratis, and deliver copies at the price mentioned in Table 1, Schedule D. [6 & 7 Vict. ch. 18, s. 14.]

**FREEMEN CLAIMING, OR OBJECTED TO.**—On or before the 25th day of this month, persons claiming to be inserted as freemen in the published list, or objecting to others as appearing therein, may give such notice to the town-clerk as is hereby prescribed, and he is to include the names of all persons so claiming or objected to as freemen, in lists according to Forms 9 and 18 in Schedule B., arranged according to (b) polling districts, and sign and publish the same on or before the 1st day of September, and keep copies of such lists; and allow the same, and the notices of objections to be perused gratis, and deliver copies of such lists at the prices mentioned in Table 1, Schedule D. [6 & 7 Vict. ch. 18, ss. 15, 17, 18.]

**OVERSEERS' LISTS.**—The overseers are to deliver to the town-clerk, on or before the 29th day of this month, a copy of the several lists of voters made out by them, and

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(b) Under 30 & 31 Vict. ch. 102, s. 34, the council or other the local authority, may divide a borough into polling districts, and from time to time alter them. (See 30 & 31 Vict. ch. 102, ss. 34, 37, 47, and 31 & 32 Vict. ch. 58, ss. 18, 24, 33, 35.)

of the claimants and persons objected to. [6 & 7 Vict. ch. 18, s. 19.] As to the mode and time of publication, see *Id.* ss. 23, 24, *ante*, "JULY."

### **September.**

**FREEMEN ELECTORS.**—Publish separate lists of freemen claiming, or objected to, on or before the 1st day of this month, keeping copies to be perused gratis, and deliver copies at the price mentioned in Table 1, Schedule D. [6 & 7 Vict. ch. 18, s. 18.]

**PARLIAMENTARY REGISTRATION.** — Between the 15th of this month and the last day of October (both inclusive), the revising barrister is to give at least seven days' previous notice to the town-clerk of the time and place of holding his court; and the town-clerk is forthwith to publish a notice of such time and place on the town-hall, and on every church and chapel within the city or borough, or if there be no church, chapel, or town-hall, then in some public and conspicuous place. [6 & 7 Vict. ch. 18, s. 33.]

**BURGESS LISTS.**—The overseers are to deliver to the town-clerk a list of burgesses within their parish, on the 1st day of this month; [20 & 21 Vict. ch. 50, s. 7;] and the town-clerk is forthwith to cause a copy of all such lists to be printed, and to be fixed on or near the outer door of the town-hall, or in some public and conspicuous situation on every day during the week next preceding the 15th day of this month. [5 & 6 Will. 4, ch. 76, s. 15.]

**BURGESSES CLAIMING, OR OBJECTED TO.**—On or before the 15th of this month, notices of persons objected to as burgesses, or claiming to be inserted in the list of burgesses, are to be sent to the town-clerk, who is required to make out lists thereof, and to cause copies to be fixed on or near the outer door of the town-hall, or on some public and conspicuous situation within the borough, during the eight days next preceding the 1st day of October. [5 & 6 Will. 4, ch. 76, s. 15.]

**MUNICIPAL REGISTRATION.**—See "OCTOBER."



**October.****QUARTERLY RETURN.**—*See* "JANUARY."**PARLIAMENTARY REGISTRATION.**—*See* "SEPTEMBER."

**MUNICIPAL REGISTRATION.**—The mayor and assessors are to hold courts for revising the burgess lists, between the 1st and 15th of this month, (both days inclusive,) having first given three clear days' notice thereof as here directed; [5 & 6 Will. 4, ch. 76, s. 18;] and on or before the 22nd of this month, the same lists, after being revised, are to be entered alphabetically, in a book called the "Burgess Roll," made according to the directions of the Act; [*Id.* s. 22;] and "Ward Lists" of burgesses are also to be made out by or under the direction of the town clerk; [*Id.* s. 45;] and which Ward Lists will be required previously to the 1st of November.

**MUNICIPAL ELECTIONS.**—Seven days at least before the 1st day of November, the town-clerk is to publish notices of the election of councillors (in the form contained in the schedule to the Act) on the door of the town-hall, and in other conspicuous parts of the borough or ward, and to provide nomination papers; [22 Vict. ch. 35, ss. 5, 7;] and the nomination papers are to be sent to the town clerk at least two whole days (*a*) (Sunday excluded) before the day of election, (and now by five o'clock p.m., 32 & 33 Vict. ch. 55, s. 7;) and one whole day at least (Sunday excluded) before the day of election, the town-clerk is to publish in like manner printed notices of the names, &c. of the persons nominated, and their nominators. [*Id.* s. 6.] Send circulars to aldermen and assessors, reminding them of the necessity for their attendance at the election of councillors on the 1st day of November, and give two days' public notice of the places of polling for councillors, previously to the 1st day of November. [5 & 6 Will. 4, ch. 76, s. 33.]

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(*a*) The town clerk has no right to require the nomination papers to be sent in for a longer period than two whole days before the day of election. [*R. v. Groves*, 30 J. P. 792.]

**POLICE RETURNS.**—The watch committee are required to send to the Secretary of State a return of the number of offences reported to the police for the year ending 29th September, the number of persons apprehended, the nature of the charges, and the result of the proceedings. [19 & 20 Vict. ch. 69, s. 14.]

### **September.**

**ELECTION OF COUNCILLORS.**—Election of councillors to supply the places of those who go out of office, to be held on the 1st day of this month, and the voting, if there be a poll, to commence at nine o'clock in the morning, and to close at Four in the afternoon. [5 & 6 Will. 4, ch. 76, ss. 30, 32.] Publish the names of any persons elected by virtue of nominations not later than Eleven o'clock in the morning of the day of election. [22 Vict. ch. 85, s. 8.] The town clerk should prepare proper forms for the signature of the mayor and assessors of the borough, (or the aldermen and assessors of wards, if the borough be divided into wards,) declaring the result of the elections; and the voting papers are to be kept in the town clerk's office for six calendar months at least after every election. Publish a list of the names of the persons elected by a poll, not later than Two o'clock in the afternoon of the day next but one following the day of election, unless such day be Sunday) and then on the Monday following. [5 & 6 Will. 4, ch. 76, s. 35.] Give notice to all councillors elected, requiring them to attend at an appointed time to accept office.

**QUARTERLY MEETING.**—On the 9th day of this month, a quarterly meeting of the council is to be held at Twelve o'clock, and the first business to be transacted is the election of the mayor; [5 & 6 Will. 4, ch. 76, s. 69;] and immediately afterwards elect the sheriff or sheriffs in those boroughs in which sheriffs are elected. [6 & 7 Will. 4, ch. 105, s. 5.] At the same quarterly meeting appoint the officers of the borough. [5 & 6 Will. 4, ch. 76, s. 58.] Appoint the times of holding three quarterly meetings for the ensuing year, in addition to the one fixed by the Act for the 9th November every year. At this meeting appoint

the various committees for the year. Every third year appoint aldermen.

### **December.**

**PARLIAMENTARY REGISTER.**—The town-clerk is to cause the list of voters for every borough, as revised and delivered to him by the revising barrister, to be copied and printed in a book, arranged alphabetically, so as to correspond with the division of the borough into polling districts; (see note to p. xviii, *ante*;) and to sign and deliver the said book on or before the last day of this month to the returning officer, to be by him kept. And the town-clerk is to keep copies of the register, and deliver copies thereof, or of any particular parish or polling district, at the price mentioned in the Act; and to make out an account of the expenses attending the registration, which shall include all reasonable fees and charges of the town-clerk for his trouble, and lay the same before the council, and obtain a certificate stating the sum to be paid as the contribution of each parish, and then apply to the overseers of the poor for the same. [6 Vict. ch. 18, ss. 48, 49, 55, and 30 & 31 Vict. ch. 102, ss. 31, 34, 38, and 31 & 32 Vict. ch. 58, s. 23.]

THE  
TOWN COUNCILLORS' MANUAL.

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CHAPTER I.

*Of Corporations generally.*

**CORPORATIONS DEFINED.]** A Corporation may be defined to be a body politic, capable of maintaining a perpetual succession, for the purpose of keeping alive certain rights and privileges.

**AGGREGATE OR SOLE.]** Corporations, according to the law of England, are either aggregate or sole.

A Corporation aggregate consists of several persons united together into one society, which is kept up by a perpetual succession of members, so as to continue for ever. Of this kind are the mayor, aldermen and burgesses of a borough; the head and fellows of a college; the dean and chapter of a cathedral church.

A Corporation sole consists of one person only and his successors, in some particular station, who are incorporated by law in order to give them legal capacities and advantages which in their natural persons they could not have had, particularly that of perpetuity. In this sense the king or queen regnant is a sole cor-

poration; so is a bishop, and so is every parson or vicar.

**ECCLESIASTICAL.]** Corporations are of two kinds; ecclesiastical and lay.

Ecclesiastical Corporations consist entirely of spiritual persons, such as deans and chapters, or bishops, or vicars.

**LAY.]** Lay Corporations are of two sorts, eleemosynary and civil.

Eleemosynary Corporations are such as are constituted for the perpetual distribution of the free alms or bounty of the founder of them to such persons as he has directed. Of this kind are hospitals for the relief or maintenance of the sick, and for the promotion of learning and piety.

**CIVIL CORPORATIONS.]** Civil Corporations are erected, some for the advancement and regulation of manufactures and commerce, such as the guilds or companies of London; some for the advancement and improvement of any particular science, such as the College of Physicians, and Royal Society, and such like; some again, for the good government of a city, town or particular district, such as the mayor, aldermen and burgesses of a borough, and these last are termed Municipal Corporations.

A Municipal Corporation, therefore, is a civil corporation aggregate, established for the purpose of investing the inhabitants of a particular borough or place with the power of self-government, and with certain other privileges and franchises. (Arn. 2, 3.)

**HOW CREATED.]** No Corporation can exist without the consent of the Crown, either express or implied.

Corporations which have been established within the time of legal memory, (*i. e.* since the 1st year of Richard 1st), are created either by royal charter or by

Act of Parliament, in both of which the royal consent is expressly given.

Some Corporations exist at common law ; others by prescription ; of these latter, the Corporation of the City of London is an example. In both these classes the Corporations have existed from before the time of legal memory, and the royal consent is implied. (Arn.)

MUNICIPAL CORPORATIONS.] The Crown, by the advice of the Privy Council, is empowered by 5 & 6 Will. 4, ch. 76, s. 141, amended by 1 Vict. ch. 78, s. 49, to grant charters of incorporation on the petition of the inhabitant householders to any town or borough in England or Wales.

This provision does not abridge the common law prerogative of the Crown to grant a charter, but prevents its granting charters with the powers conferred by the Municipal Corporations Act, except on petition by the inhabitant householders, and with the advice of the Privy Council. (Rawl. 251.)

A Corporation, as altered by the Municipal Corporation Act, is but a continuance of the old Corporation. (*Att.-Gen. v. Kerr*, 2 Beav. 420, and Rawl. 12.)

When the provisions of any Acts apply to the Municipal Corporations specified in the Municipal Act, or generally to Municipal Corporations in England, the same extend to every Municipal Corporation, whether specified in the schedule to the Municipal Corporations Act, or created since, whether by charter or otherwise. (16 & 17 Vict. ch. 79, s. 2.)

## CHAPTER II.

### *Of the Incidents of a Corporation.*

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#### 1. *Of the Corporate Name.*

HOW ACQUIRED.] It is essential that every Corporation should have a name bestowed upon it at the time of its incorporation, which name is, according to Sir Edward Coke, as the proper name or names of baptism of a private individual. And by that name alone the Corporation must perform all its corporate acts, and must be described in all documents and legal proceedings.

But a minute variation in this respect is not material, and a liberal interpretation has in this respect always been exercised in cases of grants and devises, where the object has been to ascertain the intention of the grantor or testator, and the courts have been disposed to give effect to that intention where it was plain what precise Corporation was meant. (Arn. 8.)

The name of the body corporate of every borough named in the schedules to the Municipal Corporation Act is "The Mayor, Aldermen, and Burgesses" of such borough; (5 & 6 Will. 4, ch. 76, s. 6), but where the Town Corporate is a *city*, the proper appellation of the body corporate will be, "The Mayor, Aldermen and Citizens" of the city. (*Att.-Gen. v. Worcester*, 2 Phill. 3; Rowl. 12.)

*2. Of the Corporate Seal.*

**COMMON SEAL.]** One of the incidents of a Corporation is the having and using a common seal, by which the body corporate is considered to express their aggregate intention, as they cannot do so by any personal act or oral discourse. The individual members, indeed, may manifest their private assent to any act by words, or by signing their names, but that will not bind the Corporation; it is only the affixing of the seal which unites the several assents of the individuals who compose the community, and makes one joint assent of the whole. (Arn. 10.)

It is not necessary that there should be any clause in the charter of incorporation empowering them to use a seal; as it is a necessary incident to the existence of a Corporation that it should have one, and as soon as the Corporation is established, the body may make and use what seal they will. (Sutton's Hospital, 10 Rep. 30; Arn. 11.)

When the Corporate Seal appears affixed to a document it will be presumed to have been regularly so affixed; and the party who impugns the legality of the affixing, has the burden cast upon him of showing in what manner the annexation was illegal or irregular. (Skinn. 2.)

Where the Corporate Seal has been affixed to an instrument without the authority of the corporate body, it is invalid, and may be repudiated by them. (12 Mod. 423.)

Where the Corporate Seal was regularly attached to a conveyance, but at the same time the clerk of the corporation was ordered to retain the conveyance in his hands until some accounts were settled with the pur-



chasers, it was held that the conveyance did not pass the estate. (*Derby Canal Company v. Wilmot*, 9 East, 360; Arn. 12.)

WHEN REQUIRED.] The annexation of the Corporate Seal being necessary for the purpose of expressing the assent by the corporate body to any act or thing, it follows that any corporate act, or at least any act of importance must be by deed, unless some other mode of binding the Corporation be sanctioned by the Act of parliament, or deed of constitution creating or regulating it.

An appointment by deed is not necessary in cases where the acts to be performed are of daily occurrence and too insignificant to be worth the trouble of affixing the corporate seal; or, where the act to be done requires to be executed immediately; as for instance, to distrain cattle damage feasant, which might escape before the formality of executing a deed could be gone through. (*Manby v. Long*, 3 Lev. 107.)

GENERAL RULE.] A corporation cannot, as a general rule, make any contract except under seal; but where a contract has been actually executed, the law will imply a promise, and a deed under seal is not necessary.

ILLUSTRATIONS OF RULE.] The law has been laid down in a text book of great authority (see 1 *Selm.* N. P. 70,) in the following words:—"A corporation aggregate may sue and be sued in the indebitatus counts on an executed parol contract, *e.g.* for goods sold and delivered; for they may contract without affixing the common seal, in cases where convenience, amounting almost to necessity, requires that they should do so, as in hiring inferior servants, or doing acts frequently recurring or too insignificant to be worth the trouble of affixing the common seal, or in matters connected

with and necessary for the business or trade for which they are incorporated. The appointment of an attorney to conduct important suits affecting the rights and property of the corporation cannot be considered a trifling matter; nor is it of such frequent occurrence, or of such immediate urgency, as to render it inconvenient to postpone it until the seal of the corporation can be affixed to the retainer. It makes no difference as to the right of a corporation to sue on a contract entered into by them without seal, whether the contract be executed or executory, or whether the promises be express or implied, although it may, if they be the parties sued. In the case of *The Fishmongers' Company v. Robertson*, 5 M. & G. 131, and 6 Scott's N. R. 56, where the contract was one which did not fall within any of the exceptions to the general rule requiring corporate contracts to be under the common seal, Tindal, C. J., in delivering the judgment of the court, said, "whatever may be the consequences where the agreement is entirely executory on the part of the corporation, yet if the contract, instead of being executory, is executed on their part—if the persons who are parties to the contract with the corporation *have received* the benefit of the consideration moving from the corporation, in that case the other parties are bound by the contract, and liable to be sued thereon by the corporation. Even if the contract put in suit by the corporation had been on their part executory only not executed, we feel little doubt but that their suing upon the contract would amount to an admission on record by them that such contract was duly entered into on their part, so as to bind themselves, and that such admission on the record would stop them from setting up as an objection in a cross action, that it was not sealed with their common seal."

In another well known work (Chitty's Archbold, 12 ed. 1146,) the law is stated in very similar terms; the exceptions to the general rule as to the necessity for contracts being under seal being mentioned in the following words on the authority of the cases there referred to, (viz.):

"1. When the acts done are such as the corporation by its very constitution, is appointed to do, as in the case of trading corporations, whose duty, by their very appointment, being to draw bills of exchange, they may do it without affixing the common seal; and,

"2. When the acts are required for convenience, management and comfort, as, when either the acts are trivial in their nature and of frequent occurrence, so that the doing them in the usual way (*i. e.* under seal) would be inconvenient or absurd; or are such that an overruling necessity requires them to be done at once; in that case also the corporation may proceed by parol, instead of affixing the seal according to the proper and regular course. In some cases corporations are liable when a parol contract which ought to have been under seal has been executed."

On the principle of the contract having been an executed one, it was held by the Court of Exchequer in the case of *Merrall v. Ecclesiastical Com.* 20 L. T. (N. S.) 573, that although the lease granted by the Commissioners was void *ab origine* for want of the corporate seal, yet the tenant having occupied and paid rent under it, an implied tenancy from year to year was created, and that an action would lie against the intended lessee for dilapidations, in breach of his agreement to repair.

On the same principle, and also on the doctrine of acquiescence, in the late case of *Crook v. Corporation of Seaford*, 25 L. T. N. S., 1 (Chancery), where the cor-

poration had passed a resolution in January, 1860, agreeing to let land for 300 years, to be "stumped out" by a committee and the purchaser, at the purchaser's expense, and the land had been "stumped out" by the purchaser, who had thereupon taken possession and erected a terrace upon it, as required by the terms of the resolution, and had also paid rent to the corporation, it was held that the purchaser was entitled to a decree for specific performance, the corporation having acquiesced in all that had been done, and the objection that the resolution which constituted the (a) agreement was not under seal, and therefore not binding on the corporation, was untenable.

**APPOINTMENT OF OFFICERS.**—Councils may appoint their officers and servants by their resolution at a meeting of the Council, (33 J. P. 205,) and may in like manner fix their salaries or remuneration. Although a corporation cannot sue otherwise than by attorney, who should be appointed under their common seal, yet the corporation will be bound by the act of their attorney, so far as the defendant is concerned, whether his appointment be under seal or not. (*Flaviell v. Eastern Co. R.*, 2 Exch. 344.)

**PROOF OF DEBTS.]** All bodies politic and public companies incorporated by Act of parliament may prove a debt in bankruptcy by an agent, provided such agent shall in his deposition swear that he is such agent, and that he is authorized to make such proof. (12 & 13 Vict. ch. 106, s. 164.)

(a) Under the circumstances of the title to the property, the court was of opinion that the corporation were not within the M. C. Act, as to the duration of leases, (pp. 16, 17,) and not therefore prohibited from granting a lease for the term men-

tioned. The principle thus laid down as to the effect of a resolution of the Council, and of subsequent acquiescence in acts done on the faith of it, is just and equitable, and may be of wide application.

## CHAPTER III.

### *Of the Power to make Bye-Laws.*

**POWER TO MAKE.]** An incident to a corporation included by law in the very act of incorporation is the power to make bye-laws, or private statutes for the government of the whole body; and these laws are binding upon the members, unless they are inconsistent with, or contrary to, the law of the land, or the provisions of the Municipal Corporations Act, or the provisions of the charter of incorporation. (Arn. 16.)

**HOW MADE.]** Since the passing of the Municipal Corporations Act, all bye-laws for the good rule and government of the borough, or the prevention or suppression of such nuisances as are not already punishable in a summary manner, by virtue of any Act in force throughout the borough, with such fines for their violation not exceeding 5*l.* as the council shall deem necessary, must be made at a meeting of the council, (5 and 6 Will. 4, ch. 76, s. 90,) at which at least two-thirds of the whole number of the council shall be present; and all offences committed in breach of the bye-laws are punishable summarily in like manner as other offences against the Municipal Corporations Act. (*Id.* s. 91.)

No bye-laws so made will be of any force until the expiration of forty days after the same, or a copy thereof shall have been sent sealed with the seal of the borough, to one of the principal secretaries of state, and shall have been affixed on the outer door of the town-hall, or in some other public place within such

borough; and if at any time within such period of forty days, or any enlarged time for considering the same, Her Majesty, with the advice of the privy council, shall disallow the bye-law or any part thereof, such bye-law, or the part thereof disallowed, shall not come into operation. (M. C. s. 90.)

The provisions of the statute do not interfere with any existing bye-laws, except such as may be inconsistent with or contrary to that statute (such being repealed by section 1), but relate only to bye-laws made after the passing of the Act. (Arn. 18.)

BYE-LAWS GENERALLY.] Bye-laws may be made generally for the regulation of the internal affairs of a corporation; the conduct of its members; the reasonable exercise of a right, or the mode by which a person is to be admitted thereto, where he has an inchoate title; but they cannot take away a right, or impose any unreasonable restraint in the exercise thereof. (See Rawl. 159, and Arn. 18.)

Before the Municipal Corporation Act, bye-laws in restraint of trade were considered bad, unless they were supported by a custom in the borough, when they would be upheld. (See *Leicester v. Burgess*, 2 N. & M. 131, and Arn. 20.) But now all bye-laws and customs prohibiting persons other than freemen, &c., from carrying on trade within a borough, are abolished by the 14th section of the Municipal Corporation Act.

WHEN INVALID.] As a general rule any bye-law that is unreasonable, or unjust, or uncertain, is bad, and a bye-law inflicting imprisonment as a penalty is invalid; (*Hutchins v. Player*, Moore 411,) but a bye-law imposing a penalty of 5*l.* to the use of the Corporation, "or less, at the discretion and pleasure" of the Corporation, is not bad for uncertainty in the amount of the penalty. (*Piper v. Chappell*, 14 M. & W. 624.)

A bye-law may be good in part and bad in part ; but that can only be the case where the two parts are entire and distinct from each other ; thus, if a bye-law consists of several distinct and independent provisions, although one or more of these may be void, yet the rest of the bye-law may be valid. (*R. v. Lundie*, 31 L. J. Q. B. 244, and *Arn.* 23.)

But if a bye-law be entire, and one part be void, it is void altogether. (*Dodwell v. Oxford*, 2 Vent. 34.)

The validity of a bye law may be disputed before the justices by reason of its being *ultra vires* (a), or other lawful ground of objection. (*Everett v. Grapes*, 3 L. T. (N. S.) 669.)

NONACCEPTANCE OF OFFICE.] Bye-laws imposing fines on mayors, aldermen, councillors, auditors, and assessors for the nonacceptance of office as authorized by the Municipal Corporation Act, s. 51, should be made in the same manner as required in the case of bye-laws made under the 90th section. The fine is not to exceed 50*l.*, except for the nonacceptance of the office of mayor, in which case it must not exceed 100*l.*

REPEAL.] Bye-laws may be repealed by the corporate body, by a new law made for that purpose, which, like every other bye-law, must be submitted to the Secretary of State as required by s. 90.

How ENFORCED.] Offences against any bye-law made by virtue of the Municipal Corporation Act are punishable by summary conviction before two justices.

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(a) So much uncertainty exists as to the validity of many bye-laws which have been made by Town Councils, and allowed by the Home office, as to render it desirable, whenever an opportunity offers, for councils to

embody in a local Act a code of bye-laws or regulations which may be acted upon with perfect certainty and confidence. This has been done in the borough of Leicester.

The prosecution for any such (*b*) offence must be commenced within three calendar months after the commission thereof; (Municipal Corporation Act, ss. 91, 127;) and evidence of a practice in contravention of a bye-law is not receivable. (*Sells v. Brown*, 9 C. & P. 601.)

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(*b*) The justices have no jurisdiction over offences against bye-laws made previously to this Act coming into operation. (Rawl. 103.)



## CHAPTER IV.

### *Of Corporate Property.*

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#### 1. *Of Purchase.*

POWER TO PURCHASE.] Corporate bodies were at common law capable of purchasing land for the benefit of themselves and their successors. But by the various statutes of mortmain they were prohibited from purchasing more lands without a licence from the Crown. At the revolution it was declared, (1 W. & M. sess. 2, ch. 2,) that the power of dispensing with statutes claimed on the part of the Crown was illegal and void, and as it was afterwards considered that this might be construed into a prohibition against the exercise of the royal power, in granting licences to Corporations to take lands, it was thought prudent to give a legislative sanction to such licences. Accordingly, by stat. 7 & 8 Will. 3, c. 37, it was enacted, that it should be lawful for the Crown to grant to any Corporation licences to alien in mortmain, and also to purchase, acquire, take and hold in mortmain, in perpetuity or otherwise, any lands, tenements, rents or hereditaments whatsoever. Corporations, therefore, may now, upon obtaining the royal licence, purchase real property to any extent.

With regard to personal property, as the statutes of mortmain have no reference thereto, Corporations are

capable of taking that species of property to any amount. (Arn. 25.)

Under 23 & 24 Vict. ch. 16, ss. 8, 9, power is given to the council of any city, or borough in England, the body corporate of which has not power to purchase or acquire land, or to hold land in mortmain, to purchase or acquire the same for public purposes, with the approbation of the lords of the treasury; and with the like approbation to borrow the money on mortgage or security of the borough fund, or borough rates, on complying with the provisions of the Act as to notices, &c. (See p. 23, *post*.)

## 2. Of Alienation under 5 & 6 Will. 4, ch. 76.

RESTRICTIONS.] By 5 & 6 Will. 4, ch. 76, s. 94, it is enacted, that it shall not be lawful for the council of any Body Corporate to sell, mortgage, or alienate the lands, tenements, or hereditaments of the body corporate, or to grant any leases for a term exceeding thirty-one years, to be computed from the making of such lease, except leases of buildings, or leases for building or improvement, which may be granted for seventy-five years, (s. 96,) either at a reserved rent or a fine, or both, (6 & 7 Will. 4, ch. 104, s. 2,) unless, in pursuance of some covenant, contract, or agreement *bonâ fide* entered into on or before the 5th of June, 1835; or in pursuance of some resolution duly entered in the Corporation books, on or before the same day;

Or with the approbation of the lords of the treasury, or any three of them (now two, see 12 & 13 Vict. ch. 89.)

If the Corporation desire to sell, mortgage or alienate, or in any other way dispose of any of the

corporate lands, (and the power of alienation may be either by way of absolute sale, or by way of exchange, mortgage, lease, or any other mode of disposition; 6 & 7 Will. 4, ch. 104, s. 2;) or to grant any lease for a longer term than thirty-one years, or upon different terms and conditions than those mentioned in the Municipal Corporation Act, the consent (c) of the Lords of the Treasury must be obtained as follows, *i. e.*—

1st. A notice of the intention to apply to the treasury must be fixed on the outer-door of the Town Hall, or in some public and conspicuous place within the borough, one calendar month at least before such application; and

2ndly. A copy of the memorial intended to be sent to the treasury, must be kept in the town clerk's office during such month, and be freely open to the inspection of every burgess at all reasonable hours during that period. (Municipal Corporation Act, s. 94.)

LEASES IN CERTAIN CASES.] The council may grant a renewal of any lease, where on the 5th of June, 1835, the Body Corporate were under a covenant or agreement, express or implied, to renew; or where they have been enjoined by any deed, will, or other document to renew; or where such renewal has been sanctioned by ancient usage, or by custom or practice; or where the Corporation shall have ordinarily (d) made

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(c) The consent of the treasury must be confined to the particular mode of alienation mentioned in the memorial; (*Arnold v. Gravesend*, 25 L. J. Ch. 776;) and the consent may be given by a letter, signed by

the secretary to the treasury. (*Id.*, and 27 L. T. 282.)

(d) This provision is to be construed liberally. (*Attorney General v. Great Yarmouth*, 21 Beav. 625.)

renewal. (Municipal Corporation Act, s. 95. Arn. 30.)

**BUILDING LEASES.]** The council may grant leases for any term not exceeding seventy-five years of tenements or hereditaments, the greater part of the yearly value of which shall, at the time of making the lease, consist of buildings, of land or ground proper for the erection of houses or other buildings thereon, with or without gardens, yards, curtilages, or other appurtenances, and where the lessee shall covenant or agree to erect a building or buildings thereon of greater yearly value than such land or ground, of land or ground proper for gardens, yards, curtilages, or other appurtenances to be used with any other house or other building erected or to be erected on any such ground belonging either to such Body Corporate or to any other proprietor, or proper for any other purpose calculated to afford convenience or accommodation to the occupiers of any such house or building. (Municipal Corporation Act, s. 96.)

The power given by this section extends to a lease either at a reserved rent, or fine, or both, as the council shall think fit. (6 & 7 Will. 4, ch. 104, s. 2.)

*Purchases and Mortgages under 23 & 24 Vict. c. 16.*

**REPAYMENT OF MORTGAGES.]** In any case where the Lords Commissioners of the Treasury approve of any mortgage of any hereditaments of the body corporate of any borough, they may, as a condition of their approval, require that the money borrowed on the security of such mortgage shall be repaid, with all interest thereon, in thirty years, or any less period, and either by instalments or by means of a sinking fund,

or both, as the said commissioners may think fit; and in every such case the sums required for providing for the repayment of the principle and interest of the money borrowed shall by virtue of this Act become charged upon the hereditaments comprised in such mortgage (without prejudice to the security thereby created), or any other hereditaments (if any) of the said body corporate, or the borough fund, or the borough or other rates legally applicable for the payment or discharge of the money borrowed, or the expenses which such money may be borrowed to defray, or on all or any of the securities aforesaid, as the said commissioners may direct. (23 & 24 Vict. ch. 16, s. 1.)

SINKING FUND.] When any money to be borrowed as aforesaid is directed to be repaid by means of a sinking fund, the council shall, out of the rents and profits of the hereditaments, or out of the borough fund or rates on which the sums required for such sinking fund are charged under this Act, invest such sums, and at such times and in such government annuities, as the Treasury may direct, and shall also from time to time invest in like manner all dividends of such annuities, so as to accumulate at compound interest, and all annuities in which such investments are made shall, in the books of the governor and company of the Bank of England, be placed to the account of the body corporate, and "In the matter of the Municipal Corporation Mortgages, &c. Act, 1860," and the dividends of such annuities shall be paid to such person or persons as the council by power of attorney under the corporate seal of the borough from time to time appoint, and shall be invested as herein directed; but the annuities to be purchased shall not be sold or transferred without the consent in writing of the said commissioners, addressed to the chief accountant of the Bank of

England; and the direction in writing of the council of the borough by power of attorney under the corporate seal of the borough, with such consent in writing of the said commissioners, shall be sufficient authority to the governor and company of the Bank of England for permitting the transfer of such annuities or any part thereof. (*Id.* s. 2.)

REPLACEMENT OF MONEY.] Where any purchase money or compensation has been paid into the Bank of England, under any Act of parliament, in respect of any hereditaments, or any interest therein, purchased or taken from any such body corporate, or in respect of any permanent damage to any land of any such body corporate, and the treasury approve of the payment of such money or compensation, or of any money to arise from the sale of any government securities in which the same may have been invested, to such body corporate or their treasurer, the treasury may, as a condition of their approval, require provision to be made for raising in manner herein-before provided with respect to a sinking fund for repayment of money borrowed on mortgage, and investing in government annuities a sum equivalent to the amount of money so paid to such body corporate or their treasurer; and the provisions herein-before contained in the case of a sinking fund, as to the mode of investing, payment of dividends, and transfer of annuities, shall be applicable in the case of investments under this provision; and the treasury shall, when it appears to them that an amount of annuities equivalent to the amount paid as aforesaid has been raised by investment under this enactment, direct that the accumulation shall cease; and such annuities and the dividends thereof shall thenceforth be applicable as the same would have been if such annuities had arisen from investment under the Act of

parliament under which such purchase money or compensation as aforesaid became payable; provided always, that this section shall not apply to any money payable to a body corporate, when provision for the application of such money, or of the price or compensation from which such money has been derived, is contained in any local Act of parliament relating thereto, and the money is to be paid to such body corporate, to be applied in conformity with such provision. (*Id.* s. 3.)

PROCEEDS OF SALES.] Where the treasury approve of the sale of any hereditaments, or any interest therein, of any such body corporate, their approval may be subject to such conditions for and in relation to the investment of the proceeds of such sale for the benefit of such body corporate as the treasury may see fit, and where they direct the same to be invested in government annuities, the provisions herein-before contained as to the mode of investing, payment of dividends, and transfer of such annuities, shall be applicable, but not so as to render necessary any accumulation; or if the treasury see fit to consent to the application of the proceeds of such sale or any part thereof for the benefit of the inhabitants of the borough, they may as a condition of their consent require the like provision to be made as they are authorized to require in the case of their approval of payment to any such body corporate or their treasurer as herein-before mentioned; and this enactment shall apply as well to any money received for equality of exchange by any such body corporate as to the proceeds of the sale of any hereditaments or interest in hereditaments of any such body corporate. (*Id.* s. 4.)

INVESTMENTS.] The treasury may at any time consent to the application of any annuities arising from investments under either of the two last preceding sections

(sects. 4 and 5), or of the monies to arise from the sale thereof or any part thereof respectively, for the benefit of the inhabitants of the borough, and as a condition of their consent may require the like provision to be made as they are authorized to require in the case of their approval of payment to any such body corporate or their treasurer as herein-before mentioned, and so from time to time, as often as the said commissioners think fit, and the provisions of this Act shall be applicable accordingly; but nothing in this Act shall be deemed to make it imperative on the treasury to require such provision as aforesaid as a condition of their assent to the application of such annuities or monies, or to the payment of any purchase money or compensation in respect of hereditaments of a body corporate (or money to arise from the sale of investments thereof), to such body corporate or its treasurer, where, by reason of the application of such annuities or monies to improvement of the property of such body corporate, or for the permanent benefit of the borough or otherwise, under the special circumstances of the case, the treasury in their discretion think fit to dispense with such provision. (*Id.* s. 5.)

PREVIOUS MORTGAGES.] Where before the passing of this Act the lords of the treasury have approved of any mortgage of the hereditaments of the body corporate of any borough, and on such approval have required a sinking fund to be formed from time to time in the name of trustees, or have approved of the payment to any such body corporate or their treasurer of any such purchase money or compensation as aforesaid, or of any money arising from the sale of any government securities in which the same may have been invested, and have on such approval required provision to be made for raising, by means of invest-



ments in the names of trustees, an amount equivalent to the amount paid with such approval to such body corporate or their treasurer, or have approved of the sale or alienation of any hereditaments or interest therein of any such body corporate, and have required on such approval the investment of the proceeds of such sale in the names of trustees, the said commissioners may require any securities in which any such investments may have been already made to be transferred into the name of such body, and "In the matter of the Municipal Corporation Mortgages, &c. Act, 1860," or may require any money applicable for the purposes of such sinking fund to be invested in the purchase of government annuities in the name of such body, and "In the matter of the Municipal Corporation Mortgages, &c. Act, 1860;" and the order in writing of the treasury for that purpose shall be a sufficient discharge to such trustees from all claims in respect of the transfer of such securities in pursuance of such order, and the said commissioners may in the respective cases aforesaid give such directions as they might give in the analogous cases herein-before provided for, arising after the passing of this Act, or as near thereto as the circumstances of the case may require, and the provisions of this Act shall be applicable accordingly. (*Id.* s. 6.)

**MISAPPROPRIATION OF MONEY.]** If any person authorized to receive the monies to arise from the sale of any annuities or securities purchased or transferred under this Act, or any dividends, or any other such money as aforesaid, appropriate the same otherwise than as directed by this Act, or by the treasury in pursuance thereof, he shall be guilty of a misdemeanor, and be subject to the provisions of the 20 & 21 Vict. ch. 54, applicable to any person guilty of a misdemeanor under that Act. (*Id.* s. 7.)

**PURCHASES WITH CONSENT OF TREASURY.]** In every case in which the council of any city or borough in England, the body corporate of which has not power to purchase or acquire land and hereditaments, or to hold land in mortmain, deem it expedient to purchase or otherwise acquire, for public purposes, any hereditaments, such council shall represent the circumstances of the case to the commissioners of Her Majesty's treasury, and it shall be lawful for such council, with the approbation of the commissioners, to purchase or acquire any hereditaments in such manner and on such terms and conditions as may have been approved of by the said commissioners, and such hereditaments may be conveyed to and holden by the body corporate of such borough accordingly; and in any such case as aforesaid, and also in any other case where the commissioners are satisfied, upon representation of the circumstances, that all or any part of the purchase money of any hereditaments proposed to be purchased for public purposes by the council of a borough should be raised by mortgage or charge as hereinafter mentioned, the council may, with the approbation of the commissioners, charge and make liable, by way of mortgage or otherwise, the hereditaments so to be purchased, or any other hereditaments of the body corporate, or the borough fund, or borough rates of the borough, or all or any of the securities aforesaid, with the payment of any money necessary for effecting such purchase, and interest; and the provisions contained in this Act with reference to the approval of mortgages shall be applicable in the case as well of charge on the borough rates or borough fund as of mortgages under this provision; provided that notice of the intention of the council to make such application shall be given, and a copy of the memorial intended to be sent be open to inspection as

by law required in the case of a like application in relation to a disposition of hereditaments. (*Id.* s. 8.)

Where any application by the council of any borough is made for the approbation of the commissioners to any proposed disposition, purchase, or acquisition of any property, and the commissioners either altogether refuse the application or grant their approbation conditionally, or otherwise qualify the same, notice of the correspondence between the said commissioners and the council shall forthwith and for one month be fixed on the outer door of the town-hall, or in some public and conspicuous place within the borough, and a copy of such correspondence shall during the same period be kept in the town clerk's office, and be freely open to the like inspection as by law provided with respect to the copy of the memorial containing such application required to be kept in such office. (*Id.* s. 9.)

SCHEMES FOR PAYMENT OF DEBTS.] The Corporation of any borough may submit to the treasury any scheme for the discharge of any borough mortgage debts, for the discharge of which no adequate legal provision now exists, by instalments, or by a sinking fund, or by both, extending over any term of years; and if the commissioners approve of such scheme, the sums required for providing for the discharge of the debt to which such scheme relates, in the manner proposed therein, shall, by virtue of this Act, become charged upon all or any of the hereditaments of the body corporate, or the borough fund, or the borough rates, or any other rates which would have been applicable to or towards the discharge of such debts, or on all or any of the securities aforesaid, as the treasury may approve and direct; and the provisions contained in this Act applicable where provision is made for repayment of money borrowed on mortgage by a sinking fund and

instalments, or both, except the limitation to a period of thirty years, shall be applicable to the provision for the discharge of a mortgage debt under this provision ; provided that notice of the intention of the council to make application to the said commissioners for the approval of any such scheme shall be given, and a copy of the memorial intended to be sent shall be open to inspection, in like manner as in cases of application to the commissioners for their approval of a disposition of hereditaments. (*Id.* s. 10.)

**PAYMENT OF CERTAIN DEBTS.]** After reciting that in certain boroughs sundry debts have from time to time been incurred under the authority of Acts of parliament, with different periods assigned for the discharge of the same : It is enacted, that it shall be lawful for the corporations of such boroughs respectively, with the consent of the treasury, and with the consent in writing of the persons or bodies corporate to whom such debts respectively may be owing, previously obtained, to consolidate all such sundry debts into one, and thereon to make provision for the discharge of such consolidated debt, by annual instalments or by a sinking fund, or by both, extending over a period not exceeding thirty years, and to make such annual instalments or payments a legal charge upon the borough fund or the borough rates, or any other rates which would have been applicable to or towards the discharge of such debts, or on all or any of the securities aforesaid, as the said commissioners may approve and direct ; provided that notice of the intention of the council to make application to the said commissioners for the purpose aforesaid shall be given, and a copy of the memorial intended to be sent shall be open to inspection, in like manner as in cases of application

to the commissioners for their approval of a disposition of hereditaments. (*Id.* s. 11.)

**SURPLUS RENTS IN CERTAIN BOROUGHES.]** Where in any borough subject to 5 & 6 Will. 4, ch. 76, a surplus is standing to the credit of the borough fund arising from the rents and profits of the property of the Corporation, and not from a borough rate, *and such borough is a district within the meaning of the "Public Health Act, 1848,"* the Corporation, acting as the local board of health of such borough, may, with the consent of such Corporation, apply such surplus in payment of any expenses that have been previously to the passing of this Act or may hereafter be incurred by them acting as the local board of health of such borough in the improvement of the borough or of any part thereof, by drainage, enlargement of streets, or otherwise, in pursuance of the "Public Health Act, 1848," and the "Local Government Act, 1858," or of one of such Acts. (*Id.* s. 12.)

**SAVING OF LOCAL ACTS.]** Nothing in this Act shall repeal, abridge, or affect any power or authority of any body corporate, or the council of any borough, under any (*a*) local Act of parliament relating to such body corporate or borough. (*Id.* s. 13.)

**SHORT TITLE.]** This Act may be cited as "The Municipal Corporation Mortgages, &c. Act, 1860." (*Id.* s. 15.)

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(*a*) See *Attorney-General v. Birmingham*, 3 L. R. Ch. 552, which the effect of local Acts sanctioning a purchase of property under this Act, and in which the effect of local Acts was considered by the court.

4. *Alienation under Lands Clauses Act.*

(8 Vict. ch. 18.)

RESTRICTIONS ON SALES.] It is provided by the 15th section of "The Lands Clauses Consolidation Act, 1845," that nothing in that Act, (see s. 7,) nor in the special Act, (*i. e.* the Act authorizing any company, &c., to take the lands) contained, shall enable any Municipal Corporation to sell for the purposes of the special Act, without the approbation of the Lords of the Treasury, or any three of them, (now two, see 12 & 13 Vict. ch. 89,) any lands which they could not have sold without such approbation before the passing of the special Act, *other than such lands* as the company or other parties are empowered to purchase or take compulsorily. (8 Vict. ch. 18, s. 15.)

SERVICE OF NOTICE.] The notice to take lands under this Act shall be left at the principal office of business of a corporation aggregate; (see *R. v. Maryport Railway Company*, 15 L. T. 134;) or if no such office can, after diligent inquiry be found, shall be served on some principal member, if any, of such Corporation, and such notice shall also be left with the occupier of such lands, or if there no such occupier, shall be affixed upon some conspicuous part of the lands. (8 Vict. ch. 18, s. 20.)

5. *Other Provisions as to Corporate Property.*

APPLICATION OF RENTS, ETC.] By the 92nd sect. of the Municipal Corporation Act, the rents and profits of all hereditaments, and the interest, dividends, and annual

proceeds of all monies, dues, chattels, and valuable securities belonging to or payable to the Corporation, or to any member or officer thereof in his corporate capacity, are to be paid to the treasurer (a), and carried to the account of "The Borough Fund;" which fund, subject to the payment of any lawful debt due from the Corporation which shall have been *contracted before the passing of the Act*, (*Holdsworth v. Dartmouth*, 10 A. & E. 490,) and the interest thereof, and saving all rights, interests, claims or demands upon the real or personal estate of the body corporate, by virtue of any proceedings either at law or in equity, or of any (b) mortgage or otherwise, shall be applied to the payment of the salaries of the recorder, mayor, town-clerk, and other officers appointed by the council, and the other purposes for which the borough fund is liable. (Municipal Corporation Act, s. 92.)

**SURPLUS RENTS.]** See 23 & 24 Vict. ch. 16, s. 12, p. 26, *ante*, as to the application of surplus rents not arising from a borough rate in boroughs being a public health district.

**PRE-EXISTING DEBTS.]** The town council may execute from time to time any deed or obligation in the name of the Corporation for securing repayment and satisfaction of any debt or obligation contracted by or on behalf of the Corporation, before the passing of the

(a) As to the court granting a *mandamus* to compel payment of rents, &c., to the treasurer, see *R. v. Frost*, 8 A. & E. 822; *R. v. Pepper*, 7 A. & E. 747.

(b) By 6 & 7 W. 4, ch. 104, s. 1, the council is empowered to execute new securities for the pay-

ment of any debts contracted before the passing of the Municipal Corporation Act; and under 1 Vict. ch. 78, s. 28, any money borrowed and applied in discharge of a pre-existing debt is to be deemed a debt contracted before the Municipal Corporation Act.

Municipal Corporation Act. (6 & 7 Will. 4, ch. 104, s. 1, explained by 1 Vict. ch. 78, s. 28.)

ADVOWSONS.] By the Municipal Corporation Act, (sect. 139,) all advowsons, rights of presentation or nomination to any benefice or ecclesiastical preferment (*c*), in the gift of any body corporate, or members of a body corporate in their corporate capacity, and not as charitable trustees, shall be sold at such time and in such manner as the Ecclesiastical Commissioners (see 6 & 7 Will. 4, ch. 77, s. 26) may direct, so that the best price may be obtained for the same; and the council, with the consent of three of the commissioners at least, are authorized and required to convey and assure such advowsons, &c., to the purchaser; and if any vacancy take place before such sale, the bishop or ordinary of the diocese is to present.

The proceeds of the sale are to be paid to the treasurer of the borough; and be invested by him in government securities, for the use of the Corporation; and the annual interest payable thereon, is to be carried to the account of the borough fund. But under the direction of the council, (6 & 7 Will. 4, ch. 104, s. 3,) the treasurer may apply the proceeds of such sales towards the liquidation of any debt contracted before the passing of that Act by the corporation. (Arn. 42.)

CORPORATE PROPERTY A TRUST.] The Municipal Corporation Act creates a public trust of the corporate property, and of the funds raised for the purpose of the Act, subject, however, like other trust property, to the jurisdiction of the Court of Chancery. And although the Act contains provisions for correcting abuses in respect of the corporate property, there is nothing in it

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(c) See 1 & 2 Vict. c. 31, and *Hine v. Reynolds*, 2 M. & G. 71.



to exclude the ordinary jurisdiction of that court to prevent breaches of trust, (*Parr v. Att.-Gen.* 8 Cl. & Fin. 409.)

Where a hospital having a corporate character was established in close connection with a Municipal Corporation, the ex-Mayor being the governor, the master and assistants being elected from the Corporation, and the Mayor and Aldermen being visitors; it was held, (*Att.-Gen. v. Plymouth*, 9 Beav. 67,) that the Corporation and hospital were in equity incapable of contracting together; and a purchase by the Corporation of property belonging to the hospital was set aside. (Arn. 42.)

## CHAPTER V.

### *Of the Rateability of Corporate Property.*

OLD RULE.] The decision of the House of Lords in the *Mersey Docks Case* effected (to use the words of Mr. Justice Mellor,) a complete revolution in the law of rating, and abrogated the previously assumed principle that property used for ordinary public purposes, and of which there was no beneficial occupation (*i. e.* for private gain or emolument,) was not assessable to the poor rate. Ever since the reign of Queen Elizabeth, hospitals, infirmaries and charitable institutions, and property entirely devoted to public purposes, had been generally treated as exempt from assessment, and various decisions of the Court of Common Law had supported this view of the statute. It is however singular that the principle of exemption, and the true construction of the statute of 43 Elizabeth, ch. 2, under which poor rates were first authorized had never been the subject of consideration by the supreme tribunal of the country until four years ago, when, after an elaborate discussion, it was unanimously decided by the House of Lords. (Lords Westbury, Cranworth, Chelmsford, and Kingsdown concurring in the judgment), that the doctrine on which the Courts of Common Law had acted was founded on an entire misapprehension of the Act of Elizabeth, and that no property is exempt from assessment unless in the occupation of the Crown, or used in the service of the Crown or the government of the country.

It was at one time held, that property in the occupation of a Municipal Corporation could not be rated on account of the rents and profits being under the 92nd sect. of the Municipal Corporation Act, made part of the borough fund, but the law was (with certain exceptions, hereafter noticed), altered by 4 & 5 Vict. ch. 48, and Corporate property placed on the same footing as private property. Since the Mersey Docks Case there will be no exemption of Corporate property, unless it is used for such purposes as bring it within the principle laid down in that case, as the rule of exemption, or within the exemption contained in the 4 & 5 Vict. ch. 48, s. 1. We shall now, therefore, consider the extent and application of the new rule, and illustrate it by reference to one or two recent decisions.

**MODERN RULE.]** The general rule as to the liability of property to assessment to the poor's rate now is that all property is rateable except that which is in the occupation of the Crown, or of the direct and immediate servants of the Crown, (whose occupation is to be considered as that of the Crown itself), and property required for public purposes, by the government of the country, or exempt by any general or local Act of Parliament. (*Jones v. Mersey Docks Company*, 35 L. J. (M. C.) 1.) The purposes which will bring property within the exemption established by this rule, so far as the same are connected with Municipal Corporations, are buildings used for holding courts of assize or quarter sessions, judges' lodgings, police stations, and the residence of officers of the police force, for the purposes (a)

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(a) But a house occupied by a police constable near to the police station, although let to him by the chief constable for the purpose of his occupation as a constable, is not ex-

of their duty, although the furniture may belong to the officer, and his family may reside with him on the premises; (See *R. v. St. Martin's, Leicester*, 16 L. T. (N. S.) 625; *R. v. Castle View, Leicester, Id.* See also *Hodgson v. Carlisle*, 8 E. & B. 230; *R. v. JJ. Lancashire*, 27 L. J. (M. C.) 161, and *Prince of Wales Insurance Company v. Harding*, E. B. & E. 225.) Gaols and houses of correction; (*R. v. Shepherd*, 10 L. J. (M. C.) 44;) County courts (*R. v. Manchester*, 23 L. J. (M. C.) 48.) Reformatories; (*Sheppard v. Bradford*, 10 L. T. (N. S.) 421;) and on the principle of the case of *R. v. St. Martin's, Leicester*, buildings used by a Municipal Corporation for a town-hall, or for the sittings of the magistrates, or for the service of the police, or the administration of justice. Although the town-hall or other building may be sometimes used for local public purposes, yet, "if the primary and principal objects," (to use the words of Cockburn, C. J.), be those relating to the government of the country, the premises will be exempt from assessment.

STATUTORY EXEMPTIONS.] The 4 & 5 Vict. ch. 48, passed for the purpose of rendering Corporate property rateable, contains a proviso (s. 1,) that where property lies in any parish, situate wholly within a city or borough named in the Schedules A. and B. to the Municipal Corporation Act, and in which city or borough the poor are relieved by one entire rate, or were at the passing of the Municipal Corporation Act relieved by one entire rate, the exemption of property in the occupation of Corporations from rate-

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empt from rateability. It is house is divested of its character of rateability. (*R. v. Cockburn, C. J.*) because a constable lives in a house, that such

ability shall continue. This exemption continues notwithstanding the Mersey Docks Case, and extends to boroughs to which charters of incorporation have been granted since 1836. (See *Oldham Corporation v. Oldham*, 18 L. T. (N. S.) 240.)

LUNATIC ASYLUMS.] The lands and buildings used for pauper lunatic asylums are subject to a special provision in "The Lunatic Asylums Act, 1853," and which might be fairly and beneficially applied and extended to charitable institutions. The 35th section of 16 & 17 Vict. ch. 97, is in the following terms:—

"No lands or buildings already, or to be hereafter purchased or acquired under the provisions of any former Act or this Act, for the purposes of any asylum (with or without any additional building erected or to be erected thereon) shall, while used for such purposes, be assessed to any county, parochial, or other local rates at a higher value, or more improved rent than the value or rent at which the same were assessed at the time of such purchase or acquisition." (16 & 17 Vict. ch. 97, s. 35.)

There have been two decisions as to the effect of this enactment,—1. In *Congreve v. Upton*, 9 L. T. (N. S.) 684, it was held, that if the medical superintendent resides, as required by law, within the precincts of the asylum, in a house provided for the purpose, such house can only be rated on the principle laid down by this statute; but that the house of the chaplain, who is not required by law to reside on the premises, although he may be required to do so by the visitors, is rateable as any other property; and—2. In *Cambridge Asylum v. Fulbourn*, 12 L. T. (N. S.) 344, it was held that land cultivated as a farm and garden by the lunatics, assisted

by skilled labourers, comes within the privilege of the Act, if the primary object is not the profit, but the healthful employment of the lunatics.

**BURIAL GROUNDS.]** There is a similar provision in the Burial Boards Act of 18 & 19 Vict. ch. 128, to that contained in the Lunatic Asylums Act, the 15th section being in the following words:—

“No land already or to be hereafter purchased or acquired under the provisions of any of the Acts hereinbefore recited, for the purpose of a burial ground (with or without any building erected or to be erected thereon) shall, while used for such purposes, be assessed to any county, parochial, or other local rates at a higher value, or more improved rent than the value or rent at which the same was assessed at the time of such purchase or acquisition.” (18 & 19 Vict. ch. 128, s. 15.)

**CHURCHES AND CHAPELS.]** It is enacted by 3 & 4 Will. 4, ch. 30, that no person shall be rated to any church or poor rates for any churches, chapels, meetinghouse or premises, or such part thereof as shall be exclusively appropriated to public religious worship and which (other than churches, &c., of the established church), shall be duly certified for the performance of religious worship according to law; with a proviso that no person shall be liable to such rates because such building or any vestry room belonging thereto may be used for infant schools, or for the charitable education of the poor. (See also 21 & 22 Vict. ch. 98, ss. 38 and 55,) as to general district rates and expenses incurred by local boards of health.

**SUNDAY AND RAGGED SCHOOLS.]** Every authority having power to impose or levy any rate upon the occupier of any building, or part of a building used exclusively as a sunday school or ragged school (as

defined by s. 2,) may after 30th September, 1869, exempt such building, or part of a building from any rate for any purpose whatever, which such authority has power to impose or levy. (32 & 33 Vict. ch. 40, s. 1.)

SCIENTIFIC INSTITUTIONS.] By 6 & 7 Vict. ch. 36, s. 1, any lands, houses, or buildings belonging to any society instituted for purposes of science, literature, or the fine arts exclusively, and occupied by it for carrying its purposes into effect, are exempt from all county, borough, parochial, or other local rates, if the society be supported wholly or in part by annual voluntary contributions, and shall not, by its laws, make any dividend payable to the members, provided that such society shall obtain the certificate of the Registrar of Friendly Societies, in manner required by this Act.

CHURCH RATES.] By the Act of 31 & 32 Vict. ch. 109, abolishing compulsory church rates, it is enacted by the seventh section, that "it shall be lawful for all Bodies Corporate, trustees, guardians, and committees who, or whose *cestuique trust* are in the occupation of any lands, houses, or tenements to pay, if they think fit, any church rate made in respect of such property, although the payment of the same may not be enforceable after the passing of this Act, and the same shall be allowed to them in any accounts to be rendered by them respectively."

## CHAPTER VI.

### *Of Suits by or against a Corporation.*

How to SUE.] Corporations sue and are sued by their corporate name, and an action does not abate by the death of any of the members.

They may maintain all such suits or actions as are necessary to assert or maintain their rights, and all such suits or actions may be maintained against them for the support of adverse claims.

As Corporations cannot appear in person they must appear by attorney, and if a Corporation has a head or any other integral component part, they cannot sue or be sued without it, as, in that case, the Corporation would be incomplete.

If a Corporation sue or are sued by a wrong name, advantage can only be taken of the misnomer by a plea in abatement. (Arn. 43.)

ACTIONS BY.] A Municipal Corporation not being a trading corporation cannot sue in *assumpsit* on an *executory* contract, (see *East London Waterworks Company v. Bailey*, 4 Bing. 283,) as such a contract must be under seal, but they may maintain *assumpsit* upon an *executed* contract; as for the use and occupation of land (*Stafford v. Till*, 4 Bing. 75) or of tolls, (*Carmarthen v. Lewis*, 6 P. & C. 608,) or for goods sold and delivered.

In the case of a contract entered into by a Corporation, which is executed before the action is brought,



and under which the defendant has received the whole benefit of the consideration for which he bargained, it is no answer to an action by the Corporation, that the Corporation itself was not originally bound by the contract by reason of its not having been made under their common seal; (*London (City) v. Goree*, 1 Ventr. 298, and *Fishmongers' Company v. Robertson*, 5 M. & G. 131;) and in the recent case of *Merrall v. Ecclesiastical Commissioners*, 20 L. T. (N. S.) 578, the Court of Exchequer held that the plaintiffs might sue a tenant for dilapidations, although the agreement for a three years' tenancy was not under seal.

A Corporation cannot sue upon a bond made to the mayor in his own proper name; and the mayor, who, on the sale of certain corporate lands by auction, signed a contract on behalf of himself and the Corporation with the purchaser, cannot, in his individual capacity, sue the purchaser for a breach of the contract. (Arn. 45.)

ACTIONS AGAINST.] An action of *assumpsit* will not lie against a Municipal Corporation upon an *executory* contract for the reasons already stated; but it will lie in the case of an *executed consideration*. (*Hall v. Swansea*, 5 Q. B. 526.)

It has been shown, in p. 6, *ante*, in what cases Municipal Corporations may be sued where the contract is not under seal.

When corporations are sued in equity it is not unusual to make some of the principal members co-defendants in their individual capacity, because Corporations answer under their common seal and not upon oath, and, therefore, some difficulty might be experienced unless such a mode of procedure were adopted. (Arn. 46.)

If a party has sustained injury by the act of others,

who he has reason to suppose acted under the authority of a Corporation, and he is unable to ascertain that fact, he may file a bill of discovery in equity against them and any of their officers, before he brings an action at law, suggesting that he intends to bring one, but cannot do so without the discovery prayed. If, however, the discovery of any of the matters prayed for should be prejudicial to the Corporation, and would not be material to the plaintiff's case, the defendants are not bound to reveal such facts. (*Mordelly v. Merton*, 1 Br. Ch. Rep. 471.)

An answer in equity must be made under the corporate seal; and if the proper officer refuses to affix the seal, where the majority of the members have agreed to the answer, the Court of Queen's Bench will compel him to do so. (*R. v. Wyndham*, Cowp. 317.)

A suit against a Corporation to enforce public rights must be filed by the attorney-general, and not by an individual burgess, although he may be entitled to a separate benefit. (*Evan v. Avon*, 3 L. T. (N. S.) 347.)

LIABILITY FOR NEGLIGENCE.] With respect to the liability of a Municipal Corporation for damage occasioned by the negligence of their servants or workmen, it may be observed, that it was formerly considered there was a difference in the law as to the liability of private individuals and companies established for profit, and that of bodies acting gratuitously in the discharge of a public duty and standing in the relation of trustees for the public; in the one case the liability existing, and in the other, not. The question has undergone much discussion in several recent cases, and the result is, that there is no foundation for this distinction.

The general rule of law as to liability for damage is, that, although there may have been negligence on the

part of the person seeking to recover compensation, yet, unless he could by the exercise of ordinary care have avoided the consequence of the defendant's negligence, he is entitled to recover; but that if he has by his own act contributed towards the accident occasioning the injury, if the proximate cause of the damage be the plaintiff's unskilfulness or want of care, although the primary cause was the misfeasance of the defendant, the plaintiff will be unable to recover. (Treat. 32 J. P. 369, and cases there cited. See also *Collins v. Middle Level Commissioners*, W. Notes, 8th May, 1869.)

There is, however, a difference in the law as to damage occasioned by the act of a *contractor* and of a *servant*, as will be seen by the case of *Scott v. Manchester*, 1 H. & N. 59. In this case it was held that a Municipal Corporation employing their own servants, and not a contractor, to lay down gas pipes in the public streets, under the powers of a local Act, were responsible for damage done by the negligence of their workmen, Alderson, J., observing that commissioners may get rid of their liability by making contracts, but that if they employ their own servants to do the work they will be liable for the act of such servants.

Whenever a negligent act causing injury is done by a person employed by a Corporation, it will be necessary to inquire, not only whether he was the contractor for the work, but whether the work was lawful or not. If the injury arose from mere negligence in carrying out a lawful work, then the contractor will, it would seem, be solely liable, but if the work itself was unlawful, or unauthorized, or *ultra vires*, then the principal who employed the contractor will be liable. (See Treat. 27 J. P. 562, and cases there mentioned.)

It will not be necessary to refer to more than three

or four cases as to the now exploded doctrine of non-liability by reason of gratuitous trusteeship for the public benefit, as all of the previous decisions were in those cases the subject of elaborate discussion and consideration.

1st. In *Hartnell v. Ryde*, 27 J. P. 599, where a local Act incorporating "The Towns Improvement Clauses Act, 1847," empowered commissioners to carry out the Act, it was held that the commissioners though acting gratuitously, were liable to an action for special damage caused to a passenger who was injured by their neglect to repair a street, which it was their duty to repair.

2nd. *Mersey Docks Board v. Gibbs*, 1 L. R. (Appeals) 93, and 30 J. P. 467, where the plaintiffs were appointed by statute to manage the Mersey Docks and Harbour, and acted gratuitously, and applied the dues for public purposes; it was held by the House of Lords that the board were as much liable for the consequence of the negligence of their servants as if they were absolute owners deriving personal profit from the docks.

3rd. In *Coe v. Wise*, 30 J. P. 484, and 1 L. R. (Ex. Ch.) 711, where statutory trustees acting for a public purpose (the drainage of the fens) gratuitously, and executed the duties imposed upon them by the aid of agents and servants, it was held that the trustees were liable for damage occasioned by the negligence of their agents and servants, although the statute did not provide any fund for discharging such liability.

4th. In *Foreman v. The Corporation of Canterbury*, 35 J. P. 629, the corporation were sued, as the Local Board of Health, for injuries caused by the negligence of their servants in leaving a heap of stones on the road at night without any light, and the court held

that they were liable in damages, and that the case of the *Mersey Docks Board v. Gibbs*, 30 J. P. 467, had settled the law as to the responsibility of public bodies.

SERVICE OF WRIT.] Every writ of summons issued against a corporation aggregate may be served on the mayor or other head officer, or on the town clerk, treasurer, clerk, (see *Walton v. Universal Salvage Company*, 16 M. & W. 438), or the secretary.

COSTS.] The costs incurred by an attorney appointed by the council under seal in showing cause on reasonable grounds against several rules *nisi* for a *mandamus*, commanding the mayor and assessors to hold a court for revising certain burgess lists, may be lawfully paid out of the borough fund, being questions affecting the constituent body of the borough. (*Lewis v. Rochester*, 3 L. T. (N. S.) 300.)

So also the costs of an action undertaken *bonâ fide*, and on reasonable grounds, for the protection of corporate rights, may be paid out of the borough fund, and the right to do so does not depend on success. (*R. v. Tamworth*, 19 L. T. (N. S.) 433.) See pp. 141, 172, 201, *post*, and the several cases there referred to.

SEAL, HOW PROVED.] If it should become necessary to prove the seal of the Corporation it will not be necessary to produce the witnesses who saw the seal affixed to the instrument, but it will be sufficient to prove that the seal in question is that of the corporation. (See *Moises v. Thornton*, 3 Esp. 4.)

## CHAPTER VII.

### *Of Freemen.*

FREEMEN.] Before the Municipal Corporation Act, the corporate titles varied in different Corporations, and there was also a difference in the constituent portions of each Corporation ; but in each Corporation there was a governing body, usually known as the mayor and aldermen or bailiffs, and the general body usually styled the burgesses, or citizens, or commonalty ; and such last named persons were generally known as the freemen, and in many cities and boroughs, possessed lands or other property, to the benefit of which they were exclusively entitled. These rights are protected by the second section of the Municipal Corporation Act, the effect of which is to reserve all existing rights of property, and all immunities to such persons as on the 9th September, 1835 (the time of the passing of the Act), had a good inchoate title to them. (Arn. 55 ; see also *Gaydon v. Bankroft*, 11 L. T. (N. S.) 488, and 1 Vict. ch. 78, s. 27.)

RIGHTS RESERVED.] The 2nd section of the Municipal Corporation Act, after reciting that in divers cities, towns, and boroughs, the rents and profits of the common lands and public stock thereof have been held and applied for the particular benefit of the citizens, freemen, and burgesses, or of their widows or kindred, and have not been applied to public purposes, enacts, that every person who now is, or hereafter may be an *inhabitant* of a borough ; and also every person who

has been admitted, or who might hereafter, if the Act had not been passed, have been admitted a *freeman* or *burgess* of a borough, or who now is, or hereafter may be the wife, or widow, or son, or daughter of any freeman or burgess, or who may have espoused, or may hereafter espouse the daughter or widow of any freeman or burgess, or who has been, or may hereafter be bound an apprentice, shall have and enjoy the same share and benefit of the lands, &c. and rents and profits thereof, and of the common (a) lands and public stock of the borough, or corporation, and of any corporate property, real or personal, held in trust for charitable purposes, as fully and effectually as if the Act had not been passed.

But the total amount to be divided amongst the persons whose rights are reserved, is not to exceed the surplus remaining after payment of the interest of all debts chargeable upon the real or personal estate out of which the sums to be divided have arisen, together with the salaries of municipal officers, and all other lawful expenses which on the 5th of June, 1835, were chargeable upon the same.

The Act does not apply to any claim or right of any burgesses or freemen or other person to discharge or exemption from tolls or dues levied to the use of the Corporation; and no person thenceforward shall be entitled to be discharged or exempt from such tolls or dues (b), except in the case of any person who on the

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(a) "Statutory burgesses" (i. e., burgesses created by the operation of this Act) are not entitled to participate in the common lands and public stock held before the Act for the particular benefit of burgesses of the borough. (*Hulls v. Estcourt*, 8 L. T. (N. S.) 539.)

(b) As to the exemption from tolls, see further 6 & 7 Will. 4, c. 104, s. 9, which provides that nothing in this section shall alter or affect the exemption from tolls enjoyed by persons in virtue of other than corporate rights. And see *R. v. Frost*, 8 A. & E. 822.

5th of June, 1835, was an inhabitant, or freeman, or burgess, or entitled to be admitted as such, or the wife, widow, son, or daughter of any freeman or burgess, or was bound an apprentice, and who respectively on that day, was, by any statute, charter, bye-law, or custom, entitled to such discharge or exemption. And where any fine or fee was formerly payable to the Corporation in consideration of the freedom or of the title to such reserved rights, no person will be entitled thereto without payment of such fine or fee, which is to be paid to the treasurer of the borough; and such person must fulfil every condition which before the Act was a condition precedent to the enjoyment of such rights, so far as the same is capable of being fulfilled according to the provisions of the Act. (M. C. s. 2.)

**FREEDOM BY GIFT OR PURCHASE.]** No person after 9th September, 1835, to be elected, made, or admitted a burgess or freeman by gift or purchase. (M. C. s. 3.)

**FREEDOM, HOW ACQUIRED.]** Although the freemen or burgesses formed a necessary part of the corporate body, yet before the Municipal Corporation Act, they had seldom any active share in the management of the corporate affairs.

Each borough had its own peculiar customs and bye-laws regulating the admission of freemen; but the right to freedom generally depended upon either *birth (c), marriage, servitude, gift, or purchase*; but

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(c) The acquisition of the freedom of a state by birth or purchase is of great antiquity, and was known in ancient Rome. Each of these modes of obtaining the privilege of a Roman citizen is referred to in the New Testament (22 Acts, 28), when St. Paul claimed his immunity as a Roman; the chief Captain

Lysias saying, "with a *great sum* obtained I this freedom;" on which St. Paul replied, "but I was free born." The effect of the "appeal unto Cæsar" was to put an end to the power of the colonial governor, and to entitle to a trial before the Imperial Tribunal at Rome.



by the 3rd section of the Municipal Corporation Act, it is provided that no person should thereafter be admitted a burgess or freeman by *gift* or *purchase*.

It has been already noticed that by the 2nd section of the Municipal Corporation Act, all rights of property and certain beneficial exemptions are reserved to those persons who at the time of the passing of the Act were freemen or burgesses, or who might thereafter become so either by *birth*, *marriage*, or *servitude*, and their respective wives and daughters.

BY BIRTH.] A person to be entitled to freedom in respect of birth must be proved to be the legitimate son of a freeman.

The legitimacy, age, and identity of the person claiming the freedom may be shown in the usual way (*d*); and it may be observed that a person attains the age of 21 years on the day before his birthday,—thus, a person born on the 11th March, 1849, would be of age on the 10th March, 1870, and entitled to his admission as a freeman, to make a will, or do any other legal acts. The son of a freeman is not entitled to freedom by birth unless his father had taken up his freedom previous to such birth, or there be some custom to the contrary in any particular borough.

BY MARRIAGE.] The right to freedom in respect of marriage depends upon the local custom of each borough; and in some places a party is entitled to the freedom who has married the daughter or the widow of a freeman. (Arn. 59.)

The marriage should be proved in the ordinary way.

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(*d*) The usual proof is, the production of an extract from or certificate of the father's freedom, a certificate of birth, or the family Bible, and if there be any doubt as to the time or fact, a certificate of the marriage of the parents; the mother or some other person speaking to the identity of the parties.

By SERVITUDE.] To be entitled to his freedom in respect of servitude, the person must have been bound apprentice to a freeman, and have served as such apprentice for the whole period for which he was so bound.

The requisite period of servitude may vary in different boroughs, but it is usually seven years.

An apprenticeship may be created by agreement in writing, as well as by deed (see 54 Geo. 3, c. 96, s. 2); and unless there be a valid custom in the borough that the apprenticeship should be created by deed, service under an agreement properly stamped and sufficient in point of law to constitute an apprenticeship, will, it is conceived, be sufficient to confer the right of freedom.

The parties to the instrument must be competent to contract, but a minor of the age of 14 years may bind himself even without the joinder of his parent, it being an act for his own benefit; but a father cannot bind his son without the assent of the latter, testified by the execution of the indenture,—service under the indenture not being tantamount to execution. (*R. v. Arnesby*, 3 B. & A. 584; and *R. v. Cromford*, 8 East. 25.)

There must be a continuance of the binding and also of the service during the whole period for which the apprentice was bound; but if the master should die or become bankrupt, a service under an assignment (e) to a third party, being a freeman, would be sufficient. (*Arn. 60.*)

The relation of master and apprentice must exist between the parties; that of master and servant will

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(e) Where an apprentice was bound to a freeman for seven years, and went, by his master's consent, into the employment of a non-freeman, without any transfer of the indenture, it was

held by the Irish court, that he was not entitled to be placed on the list of freemen. (See *Lucas's case*, 6 Ir. L. R. 422.) The law of this country is, we apprehend, the same.

not be sufficient; there must therefore be a contract to teach on the part of the master, and to learn on that of the apprentice, in order to constitute the relation of master and apprentice.

If, as in some boroughs, the charter or custom requires the apprenticeship to be with a resident freeman, a binding to a freeman who is only occasionally resident in the town, and where the service is to be performed out of the borough, is not sufficient; (*R. v. Marshall*, 2 T. R. 2); but it seems that a service at some place out of the borough, if the trade carried on there is subservient to the trade carried on by the master in the borough is sufficient. (*R. v. Cambridge*, 2 Chit. R. 144.).

Service under articles of clerkship to an attorney is not a sufficient compliance with a custom requiring service of an apprenticeship to a burgess carrying on trade within the borough. (*R. v. Doncaster*, 7 B. & C. 630.) If the bye-law of the corporation requires the enrolment of the apprenticeship indenture in the corporation books, it will be sufficient if the indenture has been marked by the town-clerk as enrolled, although he has omitted to enrol it. (*R. v. Cambridge*, 2 Chit. R. 144.)

PARLIAMENTARY FRANCHISE.] The Parliamentary Reform Act (2 Will. 4, c. 45,) preserved to all persons who at the time of the passing that Act were, or who thereafter might become freemen or burgesses, the right of voting (c) in the election of members of parliament,

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(c) The 31 & 32 Vict. c. 41, makes provision for the case of certain boroughs ceasing to return members of parliament under "The Representation of the People Act, 1867," in which the persons entitled to vote for members of parliament were electors for other purposes; and enacts, by section 3, that wherever the parliamentary electors in any place in England,

subject to certain conditions and provisions; and the 4th section of the Municipal Corporation Act enacts, that any person who, if that Act had not been passed, would have enjoyed as a burgess or freeman, or might, after the passing of the last-mentioned Act, have acquired *in respect of birth or servitude*, as a burgess or freeman, the right of voting in such elections, shall be entitled to enjoy or acquire such right as fully as if that Act had not been passed.

The conditions and provisions contained in the general Reform Act, are as follows :

A freeman or burgess to be entitled to vote at the election of members of parliament,—

1. Must be duly qualified to vote on the last day of July, as if such were the day of election, and that Act had not passed.

2. He must have resided for six calendar months previous to that day within the city or borough, or within seven miles from the place where the poll had been theretofore taken, or if a freeman or burgess of a place sharing in the election for any city or borough, then within seven miles of the place mentioned in conjunction with such city or borough in Schedule E. 2. (2 Will. 4, ch. 45, s. 32.)

By the Parliamentary Registration Act (6 Vict. c. 18, s. 76,) the distance is to be measured in a straight line; and according to the ordnance map, if there be one of the borough and surrounding country.

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where there is both a municipal and parliamentary borough, are by law electors for any other purpose, the burgesses of the municipal borough are to be the electors for such pur-

poses. See also 31 & 32 Vict. ch. 46, as to the limits of certain boroughs so far as respects the election of members of parliament.

3. If a freeman or burgess otherwise than by birth or servitude, he must have been so admitted or entitled to be admitted before the 1st March, 1831.

4. If entitled by birth, his right must originally be derived from some person who was either actually a freeman, or entitled to be admitted as such before that date, or from some one who since that time shall become a freeman in respect of servitude.

5. His name must be on the register of voters (*d*) made under the Acts relating to the parliamentary franchise.

FREEMEN'S ROLL.] The town-clerk for the time being was required, by the 5th section of the Municipal Corporation Act, to make out a list by the 1st of December, 1835, of all persons, who on the 9th of September in that year, had been admitted as burgesses or freemen of the borough, such list to be called "The Freemen's Roll;" and it was enacted that whenever any person should after that time become entitled, and claim to be admitted a burgess or freeman "for the purposes aforesaid" (*e*) in respect of *birth, servitude or marriage*, the mayor should examine into such claim, and upon its being established, the claimant shall be admitted, and enrolled by the town-clerk upon the freemen's roll. The town-clerk is also required to keep a copy of the roll, to be perused by any person without fee, at all reasonable times, and to deliver a

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(*d*) It would be foreign to the object of this work to give the machinery for the registration of parliamentary voters.

(*e*) The "purposes aforesaid" refer, it is presumed, to the reservations of certain rights of

property, and beneficial exemptions, as no person will be entitled to the parliamentary franchise in respect of marriage, who was not so entitled before the 1st day of March, 1831. (Arn. 70.)

copy to any person requiring the same, upon payment of a reasonable price for the same. The Act does not specify the hours or the price; probably between 9 A.M. and 3 P.M., and sixpence for every 100 words would be a compliance with the Act, as under 32 Geo. 3, ch. 58, s. 4, with respect to the books of admission of freemen. (Arn. 70.)

The provisions of this section are extended by the 27th section of 1 Vict. c. 78 to persons who were entitled to have been admitted at the time of the passing of the Municipal Corporation Act, and who were subsequently admitted, such cases having been inadvertently omitted from the last mentioned Act.

There does not appear to be any time limited for making the claims for admission. (See *Okeshampton Case*, 1 Fraser, 166.)

The "Freemen's Roll" appears to be intended as a substitute for the "Corporation Book" formerly used for the entry of admissions. (Arn. 69.)

STAMP DUTY.] No stamp duty is payable on the admission of freemen, in respect of *birth* (*f*) or *servitude*, in any borough returning a member to serve in parliament. (1 & 2 Vict. c. 35, and as to London, 19 & 20 Vict. c. 81, s. 34.)

APPELLATE TRIBUNAL.] The Court of Queen's Bench formerly exercised an immediate authority over the admission of freemen (*g*). The appointment of the mayor to decide upon such claims, though it has created a new jurisdiction, has not ousted that of the superior tribunal, though the latter would now be exercised in the nature of an appellate jurisdiction. (Arn. 71.)

(*f*) Under 55 Geo. 3, ch. 184, there was a stamp duty of 1*l*. on admissions in respect of birth, apprenticeship, or marriage.

(*g*) See *Cates v. Knight*, 3 T. R. 442; *Exp. Love*, 1 Deac. & Chit. 31; *Exp. Benson*, *Id.* 324, 329, 330.

## CHAPTER VIII.

### *Of the Qualification of Burgesses.*

WHO ENTITLED.] The right to be on the burgess roll is now regulated by the Municipal Franchise Act (a), (32 & 33 Vict. ch. 55,) which repeals the 9th section of the Municipal Corporations Act. It received the royal assent on 2nd August, 1869, and it shortens the term of occupation required by the repealed section from two years and eight months to one year—it substitutes residence within the borough, or within seven miles for inhabitant householding—it admits females to the municipal franchise as a small concession to the demand for “woman’s suffrage”—it assimilates the mode of admeasuring the distance of seven miles to that prescribed by the legislature in the case of parliamentary voters, and contains other important provisions. To entitle a party to the privilege of a burgess, he is required under the Municipal Franchise Act—

1. To be of full age, whether male or female (M. F. ss. 1, 9.)
2. To have occupied a house, warehouse, counting-

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(a) This statute is given in different parts of this work as the Appendix, and will for “M. F.” (i. e. Municipal Franchise Act.)

house, shop, or other building (b) within the borough on the last day of July in the year of registration, and during the whole of the preceding twelve calendar months.

3. To have resided during that period within the borough, or within seven miles from it.
4. To have been rated in respect of the premises so occupied to the poor rates of the parish where they are situated during the time of such occupation.
5. To have paid on or before the 20th day of July in the year of registration all such poor rates, including therein all borough rates, if any, as shall become payable by him or her in respect of the premises up to the preceding 5th day of January; and
6. To be duly enrolled under the provisions of "The Municipal Corporations Act."

The Municipal Franchise Act provides that no person shall be enrolled (*i. e.* inserted on the burgess list) who

1. Is an alien; or,
2. Has within twelve calendar months next before the last day of July received parochial relief or other alms, (the words "or any pension or charitable allowance from any fund entrusted to the charitable trustees of the borough," which were contained in the repealed section of the Municipal Corporations Act being omitted in the Municipal Franchise Act.)

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(b) The words "other building" are introduced for the first time as capable of conferring a qualification for the burgess franchise.



*1. Full Age.*

**WHEN ATTAINED.]** The full age required by the Act is twenty-one years, which is completed on the day preceding the anniversary of a person's birth. (Bl. Com. title, "Guardian and Ward.") The party must be of age on the last day of July in the year of registration, and it will not be sufficient for him to show that he will attain his full age before the completion of the revision. (See *R. v. M'Carthy*, 12 Ir. C. L. R. 62, and *Powell v. Bradley*, 11 L. T. (N. S.) 602.)

*2. Nature of the Premises Occupied.*

**PREMISES REQUIRED.]** The premises conferring a qualification are "a house, warehouse, counting-house, shop or other building." The words, "or other building," which are contained in the Parliamentary Reform Act, (2 Will. 4, ch. 45, s. 27,) were omitted in the Municipal Corporations Act, but have been inserted in the new statute, thereby extending the qualifying property to stables, cow-houses, and other buildings.

There is no requirement either in the Municipal Corporations or the Municipal Franchise Acts as to the yearly or other value of the premises. It may be desirable to refer to some of the decisions of the courts of law and of parliament as to each description of property mentioned in the Act.

**HOUSE.]** A party residing in a house for the whole of which he is rated is entitled to be on the burgess list as an occupier of a house, notwithstanding he lets a room in the house at a yearly rent to a person who does not sleep there, (*R. v. Eys*, 9 A. & E. 670,) and it would make no difference if the person to whom it was let did sleep there, as in such case he would only be considered as an inmate or lodger, while the tenant

of the house resided there, and the latter would in law be considered as in the occupation of the whole house. (*Pitts v. Smedley*, 7 M. & G. 85, and other cases.) Where different tenements are under the same roof, and open into a common passage and staircase, there being no outer door opening into the street, it has been held that the rated occupier of every such tenement is qualified as the occupier of a house; (*R. v. Eye*, 9 A. & E. 679;) and where a house is let out in separate floors to different tenants, each having the complete control over them, such floors opening into a common staircase, and each tenant having access to their several holdings from the street through a doorway at the entrance of a passage leading to the common staircase, the floor in the occupation of each such tenant is considered in law as a house. (See *Henrette v. Booth*, 33 L. J. C. P. 61, *Cook v. Humber*, 5 L. T. (N. S.), 838, and the recent case of *Ellis v. Burch*, 24 L. T. (N. S.) 679, as to the meaning of the word "house" in 30 & 31 Vict. c. 102, s. 3.) It was, however, held in *Cuthbertson v. Buttermworth*, 33 J. P. 311, and 4 L. R. C. P. 523 that one room only of a set of chambers consisting of two rooms, each having a door opening on to the vestibule within an outer door common to both rooms, is only part of a house, and will not confer the parliamentary franchise. In this case the Chief Justice observed, that when the subject of occupation is *structurally severed* from the rest of the premises, and substantially used as a separate dwelling, or as a shop, counting-house, or warehouse, the occupier may be registered, but not for an unsevered portion of a house.

The meaning of the word "house" is not necessarily restricted to a dwelling house, and a building constructed as a dwelling-house will still be considered as a

house, although it may be used for other purposes, as for instance, sale rooms or workshops. (*Daniel v. Coulsting*, 14 L. J. C. P. 70)

A building, the lower part of which is used as a cow-house or stable, the upper part consisting of a chamber as a dwelling house, has also been considered to constitute a house. (*Nunn v. Denton*, 7 M. & G. 66.)

Where A. entered into partnership by deed with B., who was the owner of the house, in which it was agreed that the business of booksellers should be jointly carried on by them, B. to require no rent for the part of the house in which the business was carried on, and the fixtures in those parts to be joint property; A. and B. carried on business there accordingly, and were jointly rated for the same, A. residing elsewhere, the court held that A. was an occupier, and entitled to be a burgess. (*R. v. Deighton*, 13 L. J. Q. B. 241.)

Where a house has been pulled or burnt down and another house erected on the site, the qualification will continue where there is an intention to occupy the new house as soon as it is built, and the rates are paid without interruption. (*New Windsor Case*, K. & O. 153, and *Rogers*, 66.)

WAREHOUSE.] A warehouse may be defined to be a building used for storing or depositing wares or merchandize (*Arn.* 82); and a question has arisen whether the word "warehouse" means a building in which wares are deposited ready for sale or whether it extends to mills and factories in which no goods are placed except during the process of manufacture. The introduction of the words "or other building" in the new statute renders it unnecessary to discuss this question, as mills and factories are now the subject of the franchise, as being buildings.

COUNTING-HOUSE.] A counting house in common parlance is understood to mean a place of business where

mercantile and commercial affairs are transacted, and in a more limited sense that portion of a place of business in which money is received and paid.

In *Piercey v. Maclean*, 22 L. T. N. S. 213, the meaning of the word "counting-house" was fully considered, and it was held that rooms used as counting-houses, although in point of structure forming part of a house, and not structurally severed, were counting-houses within the meaning of the 2nd Will. 4, ch. 45, s. 27. This term (*per Willes, J.*) includes any place that is a counting-house in the largest ordinary sense of the word.

It has been doubted (see *Arn.* 83) whether the word comprises the offices of an attorney or solicitor, but the case of *R. v. Creeke*, 7 L. T. (N. S.) 596, would seem to be an authority in favour of their being counting-houses within the meaning of the Act, it having been there held that an entire house occupied by an attorney exclusively as a place of business, he not residing there, was a sufficient qualification. But whether a solicitor's office be a counting-house or not, it is, we conceive, "a building," and will therefore confer the municipal franchise.

SHOP.] A shop may be defined to be a building where wares are exposed or kept for the purpose of sale, and this qualification seldom gives rise to any doubt or difficulty. (*Arn.* 84.)

BUILDING.] The words "other building," in the Municipal Franchise Act will have the same meaning as under the Parliamentary Reform Act—it will, therefore, be desirable to refer to some of the decisions under that statute. These words are not to be extended (*Rogers*, 64) to their widest limits, so as to include bridges, garden walls, or the like, but if the building is adapted either for residence or for the industry which the voter carries on, and has also that

degree of durability in its construction which is included in the idea of a building, it is sufficient. (*Powell v. Boraston*, 11 L. T. (N. S.) 734, and 34 L. J. C. P. 73.) On this subject it was observed by Erle, C. J., in *Cook v. Humber*, 31 L. J. C. P. 54, that the Parliamentary Reform Act describes two classes of buildings, those used for residential and those used for commercial purposes, including in these words buildings erected or used for agricultural purposes. (See *Norrish v. Harris*, 13 L. T. (N. S.) 762.)

The following have been held to be sufficient buildings:—

A cowhouse or stable built of stone, roofed, and having a door with a lock and key, and conveniently placed for the occupation of the tenant's land; (*Whitmore v. Bedford*, 5 M. & G. 9;) a shed, constructed of planks nailed to posts let into the ground, with a door and padlock, and used by a market gardener for storing vegetables. (*Powell v. Farmer*, 11 L. T. (N. S.) 736.)

Lime kilns excavated in a cliff, and lined inside with masonry. (*Lyme Regis, B. & Aust.* 486.) A stone building in a field, roofed, with three walls, and open in the front, and either with or without a loft, used for the shade or shelter of cattle depastured in the field, and worth about five shillings a year. (*Adams v. Harris, Berry v. Harris*, and *Prout v. Harris*, 13 L. T. (N. S.) 764.) A stone building, roofed, with four walls and a door, used for storing guano and other manures to be used by the tenant on his land. (*Norrish v. Harris*, 13 L. T. (N. S.) 762.) A stone building, used for milking a cow and storing hay, although one side was open and worth about ten shillings a year; (*Gilham v. Harris*, 13 L. T. (N. S.) 763;) and rooms in a factory let to different occupiers

as cotton spinners, although the steam power for working the spinning machines was supplied by the landlord. (*Wright v. Stockport*, 5 M. & G. 33.)

It should, however, be observed that there must be a certain degree of durability in the structure to constitute it a building; thus, in *Powell v. Boraston*, 11 L. T. (N. S.) 734, the court of Common Pleas expressed its dissent from the doctrine that a building however slight was sufficient if it had a roof and was capable of containing articles, and held that a boarded shed, although fastened by posts let into the ground, erected by an electioneering agent away from the tenant's ordinary farm buildings, and built so slightly as to have been partially destroyed within a year, was not sufficient, although used by the tenant for keeping agricultural implements.

The general conclusion drawn from the cases is thus stated in "The Justice of the Peace." It must be shown that the building is in some degree adapted to be used by man, either for residence or for industry, and also that it has such a degree of durability as is included in the idea of a building; it must be something substantial, and *ejusdem generis* with the tenements previously specifically mentioned, and not a mere temporary erection for the more convenient use of the land on which it stands. (See Treatise, 33 J. P. 321.)

DIFFERENT PREMISES.] The premises in respect of the occupation of which any person shall have been rated as required by the Act, need not be the same premises or in the same parish, but may be different premises in the same parish or in different parishes. (32 & 33 Vict. ch. 55, s. 1.)

PERIOD OF OCCUPATION.] The period prescribed by the new statute is during the whole of the twelve calendar

months preceding the last day of July, thereby reducing the time required by the Municipal Corporations Act from two years and eight months to one year. Where the premises shall come to any person by descent, marriage, marriage settlement, devise, or promotion to any benefice or office, it is provided by the Municipal Corporations Act, s. 12, that such person shall be entitled to reckon the occupancy and rating in respect of the occupancy thereof, by the person from or by whom the house, warehouse, counting house, or shop shall have so come to him as his own occupancy and rating conjointly with the time during which he shall have since occupied and been rated for the same, and shall be entitled to be enrolled a burgess in respect of such successive occupancy and rating, provided he shall be otherwise qualified; and by 1 Vict. ch. 78, s. 8, it is provided that it shall not be necessary for any such person to prove that he was an inhabitant householder within the borough, or within seven miles of it, or that he was an occupant, or rated within the same, before the title to such house or other property shall have devolved upon him.

Although these sections do not use the words "or other building," now introduced for the first time as conferring the municipal franchise, it is conceived that the courts of law will give effect to the evident intention of the legislature, and hold that these provisions as to a house, warehouse, counting house, or shop coming by descent, &c., will equally apply to any qualifying building acquired in the same manner. (See Municipal Franchise Act, s. 11.)

[JOINT OCCUPATION.] There is no provision in the Municipal Corporations or Municipal Franchise Acts as to joint occupiers, and doubts were at one time raised whether such persons were qualified as burgesses,

but as each joint tenant is in law considered to be seized of the whole and every part of the property, it has been, we believe, the universal practice for some years to admit joint occupiers, and the adoption of a contrary course would have the effect of excluding many persons engaged as partners in the most respectable branches of trade and commerce. (Arn. 84.) If, however, any attempt should be made to multiply votes by a number of persons jointly taking some paltry or insignificant "building" with a view merely to the acquisition of the municipal franchise, it will be for the revising court carefully to consider whether there has been such a *bona fide* occupation of the premises as was the intention of the legislature, and whether such a creation of faggot votes is not an abuse of the new qualification, which will not be sanctioned by the courts of law.

### 3. *Residence of the Party.*

PERIOD.] A party claiming the franchise must have resided within the borough, or within seven miles of the borough for twelve calendar months preceding the last day of July, in the year of registration. (M. F. s. 1.) It is no longer necessary for the party to be an inhabitant householder; it would, therefore, be useless to refer to the complicated questions which arose on that qualification. With respect to residence, it may be observed, that a merely colourable residence will not be sufficient; (see *R. v. Richmond*, 6 T. R. 560,) but a daily and constant residence is not necessary; for if a party have a *bona fide* domicile in a place in which his family or household resides, and to which he has the *animus revertendi*, that is sufficient to constitute



him a resident of the place. (*Whithorn v. Thomas*, 14 L. J. C. P. 38.)

A person may be a resident of more than one borough. A gentleman may have his town house and his country house, so also a tradesman may have a house of business in two boroughs, in each of which he may occasionally reside, subjecting him to the obligation of serving the office of overseer, and conferring the privilege of the municipal franchise. But whether a house occupied by the party occasionally is or is not his place of abode, seems rather to be a question of fact for the revising court than of law. (*Curtis v. Blight*, 5 L. T. (N. S.) 450.)

No strict definition can be given of residency. In *R. v. Exeter*, 19 L. T. (N. S.) 397, it was observed by Blackburn, J., that a man may well have more than one place at which he resides, and a residence amounting to about eight weeks in the year, in a house occupied *bonâ fide* for the purpose of obtaining a qualification, although the party had another house elsewhere, was held to be sufficient and not merely colourable. (See also *R. v. Exeter*, 19 L. T. (N. S.) 432.) But in *Barter's Case*, 20 L. T. (N. S.) 308, it was ruled by the same learned judge (in the Oldham Election Petition) that an innkeeper, who slept occasionally (about sixteen or seventeen times in the year) at his public house at Oldham, was not qualified to vote, and that the place of abode is where a person sleeps habitually.

In this case it should, however, be observed that the claimant had no part of the house reserved for him, but slept, when at Oldham, in the same bed as his brother.

**BREAK OF RESIDENCE.]** The residence must be continuous and unbroken, and imprisonment, without the

option of paying a fine, in a gaol, situate more than seven miles from a borough, is such a break in the residence as to disqualify. (*Powell v. Guest*, 11 L. T. (N. S.) 599.) But where a person parted with his house and went to America, leaving his wife and family in lodgings, and returned to England in about seven weeks, it was held by Blackburn, J., (in the Oldham Election Petition) that there was no break of residence. (20 L. T. (N. S.) 317.)

DISTANCE.] The seven miles from a borough within which the party must reside were, under the Municipal Corporations Act, sect. 9, to be computed by the nearest public road or way by land or water, and not as under the Parliamentary Registration Act of 6 & 7 Vict. ch. 18, s. 76, "by a straight line on the horizontal plane from the point from which such distance is to be measured," or, as it is commonly described, "as the crow flies."

But, under the Municipal Franchise Act, s. 1, the distance is in future to be measured in the manner directed by the 6 & 7 Vict. ch. 18, s. 76, thus assimilating the rule as to distance in the case of ten pound occupiers and burgesses. There is, however, still a discrepancy to be noticed with respect to parliamentary electors. In the case of freemen voters the distance is measured from the place where the poll had been usually taken before the Reform Act of 2 Will. 4, c. 45, whilst in the case of ten pound occupiers (and now of burgesses) it is to be within seven miles of the borough, or any part thereof. The distance may be measured from the point in the borough which is nearest in a straight line to the voter's residence. (Arnold, 88)

#### 4. *Rating.*

POOR RATES.] The Municipal Franchise Act, s. 1, requires that the party shall have been rated in respect of the premises occupied by him within the borough to "all rates made for the relief of the poor of the parish wherein such premises are situated" during the required time of his occupation, *i. e.*, for twelve calendar months preceding the last day of July.

A poor rate to be valid must be made by a majority of the parish officers (unless there be a local Act prescribing the number of signatures necessary), and be allowed by two justices, and notice thereof published by the parish officers on the church door, on the Sunday next after it shall have been so allowed.

The Parochial Assessment Act (6 & 7 Will. 4, ch. 96, s. 2) requires that all rates shall be made in the form given in the schedule, and that certain particulars shall be stated therein, and that the parish officers shall, before a rate is allowed by the justices, sign the declaration given at the foot of the form, and that "otherwise the rate shall be of no force or validity."

It has, however, been held that these latter words apply only where the declaration at the foot of the form is not signed by the parish officers, and not where the particulars prescribed in the earlier part of the section have been deviated from. (*R. v. Fordham*, 11 A. & E. 73.)

WHEN MADE.] It was held in *Jones v. Bubb*, 19 L. T. (N. S.) 483, that, for the purpose of the parliamentary franchise, the rates "made" during the qualifying period are those which have been made and completed (*i. e.*, signed by the parish officers, allowed

by the justices, and published on the church door) within the qualifying year of occupation; and in *Ainsworth v. Creeke*, 19 L. T. (N. S.) 824, it was held that evidence might be given that a rate was not signed by the overseers at the time it was dated; in that case the rate having been dated the 18th of April, but not signed till August. But under the Assessed Rates Act (32 & 33 Vict. ch. 41, s. 17) a poor rate shall be deemed to be made on the day when it is allowed by the justices, and if the justices sever in their allowance, (i. e., if they sign, as they may do, on different days,) then on the day of the last allowance. It is also enacted by s. 18, that the production of the book purporting to contain a poor rate, with the allowance of the rate by the justices, shall, if the rate is made in the form prescribed by law, be *prima facie* evidence of the due making and publication of such rate.

VALID RATING.] The following decisions have been pronounced by the Court of Common Pleas, upon appeals under the Parliamentary Registration Act.

Where A. and B. jointly occupied premises, but in the poor rate B. alone was rated as occupier, it was held that A. was not rated, although he had *bona fide* paid the rates with his own hand, but without being called upon to do so. (*Moss v. Lichfield*, 7 M. & G. 72.) But if the rate is in such form that the name of the occupier appears, the premises for which he is rated, the rateable value, and the amount of the rate, it is a sufficient rating. (See *Wright v. Stockport*, 5 M. & G. 33.)

Where the occupier of a house, No. 3, in a street had been rated by mistake for No. 4, and the rates for No. 3 had been duly paid, it has been held that he was sufficiently rated in respect of No. 3. (*Cooke v. Luckett*, B. & Arn. 647, and Arn. 90.)

It may also be stated that in an old settlement case, (*Rex v. Chew Magna*, Cald. 365,) it was held that a settlement was gained by rating where the pauper had been assessed as "the occupier of late Hipplesley's House," the court observing that it was not necessary that the party should be actually named in the rate, and that it was enough if the parish had sufficient notice of him.

INACCURATE RATING.] With respect to inaccurate rating in the name of the party, it was held in *R. v. Gregory*, 17 Jurist, 439, that to entitle the ratepayer to be upon the rate, it is sufficient if it can be shown that he was intended to be rated, although there may be a mistake in the name as entered upon the rate. In that case, the name of "Charles" Gregory appeared on the rate, the fact being that the father, whose name was "Charles," occupied, and was rated for the premises to Christmas, 1849, when his son "Charles Brinsden" Gregory entered, thenceforth paying the rent and rates. No alteration was made on the rate for the first quarter of 1850, it appearing that the overseer knew of the change of tenancy, and intended to rate the son, and believed his name to be the same as that of his father. In giving judgment, Coleridge J., cited *Moss v. Lichfield*, 7 M. & G. 72, where Erle, C. J. said that the real question was, whether the party was intended to be rated. The grounds on which this judgment is given, would appear to sanction the revising court in holding the rating to be sufficient in any case where there is any error in the christian name, where it appears that the claimant was the party intended and called upon by the parish to pay the rate. It is, however, to be regretted that the Acts relating to Municipal Corporations do not contain any provision similar to that in

the 75th section of the Parliamentary Registration Act of 6 & 7 Vict. ch. 18, that a party shall be entitled to be registered, any misnomer, or inaccurate or insufficient description in any rate of the person so occupying, or of the premises occupied notwithstanding.

CLAIM TO BE RATED.] Any person occupying a house, warehouse, counting-house, or shop, may claim to be rated to the poor rate in respect thereof, whether or not the landlord shall be liable to be rated, and upon the occupier so claiming, and actually paying or tendering the full amount of the last made rates then payable in respect of the premises, the overseers are required to put his name upon the rate for the (a) time being, and in case they shall neglect to do so the occupier will, for the purposes of the Act, be deemed to have been rated from the period at which the rate was made; this claim is not, however, to discharge the liability of any landlord who shall be liable to the payment of the rate, in the event of the tenant not paying it (5 & 6 Will. 4, ch. 76, s. 11.) The claim to be rated is not required to be in writing. The statute is silent as to the party to whom it is made; it seems that it will be sufficient if made to any one of the overseers or any officer entrusted with the making out of the rates.

A rate is not made until the allowance of it by the justices, (32 & 33 Vict. ch. 41, s. 17.) If, therefore, a party claims to be rated after a rate has been signed by the overseers, but before the allowance by the justices, and the overseers neglect to put his name

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(a) As the claim merely extends to the rate for the time being, a fresh claim must be made in respect of every rate, (see *Wansey v. Perkins*, B. & Arn. 402.) But see "Constructive Rating," p 68, *post*.

upon the rate thus signed, he will be deemed to be rated to the previous rate, and not to the one thus signed and incomplete. (See *Bushell v. Luckett*, B. & Arn. 635.)

CONSTRUCTIVE RATING.] By the 30 & 31 Vict. ch. 102, s. 7, which abolished the "compound householder" in parliamentary boroughs, every occupier in such boroughs was required to be personally rated, and to pay his rates. The loss to parishes, and the hardship to the poor occasioned by this Act, has led to a further amendment of the law by the 32 & 33 Vict. ch. 41, s. 4. ("The Poor Rate Assessment and Collection Act, 1869,") under which owners may be rendered liable by the resolution of the vestry to the payment of the rates for property of small value, but by a more complicated system. It will be necessary to refer to this Act so far as it affects the municipal franchise, premising that the Small Tenements Act of 13 & 14 Vict. ch. 99, and so much of any local Act as relates to the rating of owners instead of occupiers, are by the 6th section repealed.

The 19th section of the Act is in the following words :

"The overseers, in making out the poor rate, shall, in every case, whether the rate is collected from the owner or occupier, or the owner is liable to the payment of the rate instead of the occupier, enter in the occupiers' column of the rate book the name of the occupier of every rateable hereditament, and such occupier shall be deemed to be duly rated for any qualification or franchise as aforesaid ; and if any overseer negligently or wilfully, and without reasonable cause, omits the name of the occupier of any rateable hereditament from the rate, or negligently or wilfully misstates any name therein, such overseer shall, for every such omis-

sion or misstatement, be liable, on summary conviction, to a penalty not exceeding 2*l.*; provided that any occupier whose name has been omitted shall, notwithstanding such omission, and that no claim to be rated has been made by him, be entitled to every qualification and franchise depending upon rating, in the same manner as if his name had not been so omitted."

*5. Payment of Rates.*

POOR AND BOROUGH RATES.] The Municipal Franchise Act provides that no person shall be enrolled in any year, unless he shall have paid on or before the 20th day of July, all such poor rates, including therein all borough rates, if any, directed to be paid under the provisions of the Municipal Corporations Act, as shall have become payable by him in respect of the premises, up to the preceding 5th day of January, (Municipal Franchise Act, s. 1.) The payment must be made by the party himself or his agent. An unauthorized payment by another person on his behalf will not be sufficient. When, therefore, it appeared that certain persons being in arrear for their rates and unable to pay them, a third party, for political purposes, paid the whole of the arrears in a gross sum, in some cases without the knowledge of the persons from whom they were due, and without their authority, it was held that there was not a sufficient payment. (*R. v. Bridgnorth*, 10 A. & E. 66.) "If the practice described were to prevail," observed Denman, C. J., "there would be great danger of the most enormous bribery."

On the other hand, where there exists a *bonâ fide* arrangement between a landlord and his tenant, that the former shall pay all rates and taxes in respect of



the premises occupied by the latter, the tenant paying an additional rent in consequence thereof, the payment by the landlord will operate in law as a payment by the tenant. This has been decided in several cases, under the Parliamentary Reform and Representation of the People Acts, in conformity with the decisions on the Law of Settlement. (Arn. 94.)

**BOROUGH RATES.]** The provision as to payment of borough rates applies only to the borough rate to be made in the nature of a county rate, under the 92nd section of the Municipal Corporation Act, and will not extend to watch rates levied by the council as *separate* rates. (*R. v. Lichfield*, 2 Q. B. 693.) But if the watch rate be ordered by the council to be paid by the overseers out of the poor rates, under precepts for that purpose, as it is competent for the council to do, then the occupier will be required to pay the whole of the poor rate, although it may include money payable thereout for the watch rate.

**ILLEGAL RATES.]** An illegal rate being a nullity, the nonpayment thereof will not disqualify a party, even although he may not have appealed against it; (*R. v. New Windsor*, 7 Q. B. 908;) but if the rate be "presumably valid," it should be paid. (See *Baker v. Locke*, 11 L. T. (N. S.) 567.)

**PROPORTIONATE PART.]** The 12th section of the 17 Geo. 2, ch. 38, which received an unexpected construction in the recent case of *Edwards v. Rusholme* (a),

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(a) In this case, decided by the Court of Queen's Bench, on 2nd June, 1869, it was held, that under the 17 Geo. 2, c. 38, s. 12, a rated outgoing tenant is liable for the rate not only for the period of his occupation, but for the time which intervenes between his ceasing to occupy, and the commencement of the occupation of the incoming tenant. This will no longer be the case.

has been repealed by the 16th section of the Assessed Rates Act. The section is in the following words:—

“ If the occupier assessed in the rate when made shall cease to occupy before the rate shall have been wholly discharged, or if the hereditament, being unoccupied at the time of the making of the rate, become occupied during the period for which the rate is made, the overseers shall enter in the rate book the name of the person who succeeds or comes into the occupation, as the case may be, and the date when such occupation commences, so far as the same shall be known to them; and such occupier shall thenceforth be deemed to have been actually rated from the date so entered by the overseer, and shall be liable to pay so much of the rate as shall be proportionate to the time between the commencement of his occupation and the expiration of the period for which the rate was made, in like manner, and with the like remedy of appeal, as if he had been rated when the rate was made; and an outgoing occupier shall remain liable in like manner for so much and no more of the rate as is proportionate to the time of his occupation within the period for which the rate was made; and the twelfth section of the statute 17 Geo. 2, c. 38, shall be repealed.”

CONSTRUCTIVE PAYMENT.] The Assessed Rates Act of 32 & 33 Vict. ch. 41, authorizes the vestry of any parish to order that the owners of rateable hereditaments not exceeding the rateable value of 20*l.* if situate in the metropolis, of 13*l.* if in Liverpool, 10*l.* if in Manchester or Birmingham, or of 8*l.* if situate elsewhere, shall be rated to the poor rate instead of the occupier on the terms there mentioned. To prevent the disfranchisement of occupiers, the 7th section is in the following words:—

“ Every payment of a rate by the occupier, notwith-

standing the amount thereof, may be deducted from his rent as herein provided, and every payment of a rate by the owner, whether he is himself rated instead of the occupier, or has agreed with the occupier or with the overseers to pay such rate, and notwithstanding any allowance or deduction which the overseers are empowered to make from the rate, shall be deemed a payment of the full rate by the occupier for the purpose of any qualification or franchise which, as regards rating, depends upon the payment of the poor rate."

EXCUSAL OF RATES.] An important decision has been lately made by the Court of Common Pleas with respect to the payment of rates by a claimant for the borough parliamentary franchise, which may possibly apply to claimants for the burgess franchise. In *Abel v. Lee*, 35 J. P. 343, and 23 L. T. (N. S.) 844, it was held that an occupier was not entitled to be put on the list of voters for members of parliament under 30 & 31 Vict. ch. 102, s. 3, sub-section 4, if any poor rates payable *before*, had (under 54 Geo. 3, ch. 170, s. 11,) been excused *after* the commencement of the qualifying year. The 30 & 31 Vict. ch. 102, s. 3, requires a claimant for the parliamentary franchise to have paid on or before 20th July, in the same year, *bond fide*, an equal amount in the pound to that payable by other ordinary occupiers in respect of all poor rates that have become payable by him in respect of the premises up to the preceding 5th day of January—the 32 & 33 Vict. ch. 55, s. 1, requires the claimant for the burgess franchise to have paid on or before 20th July all rates made for the relief of the poor, including therein all borough rates, if any, directed to be paid under the provisions of the recited Acts, as shall have become payable by him in respect of the premises up to the preceding 5th day of January. In neither of these

statutes do the words appear to limit the construction of payment to those rates which have been made since the commencement of the qualifying year, although this was probably the intention of the legislature, but they extend to all rates whenever made. This case must not however be considered as deciding more than this—that the excusal of rates *after* the commencement of the qualifying year will exclude from the franchise, leaving it an open question whether rates excused *before* the commencement of such year will have the same effect; as to which there may be (per *Smith, J.*, and *Brett, J.*) a difference in the condition of the claimant.

### 6. *Enrolment.*

This subject will be more conveniently considered in the chapter relating to the formation of the Burgess Roll.

### 7. *Disqualifications.*

#### 1. *Aliens.*

WHO ARE ALIENS.] An (*b*) alien is one born out of the Queen's dominions or allegiance, who has not been naturalized by Act of parliament, or made a denizen by letters patent. (1 Bl. Comm. "Alien," and *R. v.*

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(*b*) The law as to aliens having been the cause of great hardship to individuals, and of considerable complication between nations, the 33 & 34 Vict. ch. 97 was passed for the purpose of amending the law, and declaring the legal condition of aliens. This Act was amended as to taking the oath of allegiance on naturalization by 33 & 34 Vict. ch. 102.

*Banbury*, 14 L. T. (N. S.) 308.) But it has been enacted by different statutes that all children born out of the Queen's allegiance, whose father or paternal grandfather were natural born subjects, are to be deemed natural born subjects themselves, unless the said ancestors were attainted or banished beyond sea for high treason, or were at the birth of such children in the service of a prince at enmity with Great Britain. (Arn. 95, see 33 *J. P.* 540).

## 2. *Relief or Alms.*

ALMS.] The relief or other alms mentioned in the Municipal Franchise Act, the receipt of which within twelve calendar months before the last day of July will disqualify a party from being a burgess, consist of "parochial relief or other alms." (Municipal Franchise Act, s. 1.)

The Court of Queen's Bench has decided that the words "other alms" mentioned in conjunction with "parochial relief," mean some description of alms in the nature of parochial relief. (*R. v. Lichfield*, 2 Q. B. 693.)

In order to constitute parochial alms as relief, the fund out of which they are received should be of a public nature and be administered by the officers of the parish as such, and the word "parochial" be read as applying to "alms" as well as to relief. (*R. v. Halesworth*, 3 B. & Ad. 717, and *Rawl.* 23.)

The receipt of a portion of the income of a hospital by freemen receiving it as a matter of right, and not of an eleemosynary character, does not disqualify. (*Smith v. Hall*, 9 L. T. (N. S.) 413.)

Parochial relief given either to a party himself or with his knowledge and consent to any member of his family whom he is bound by law to support, will disqualify. Relief, therefore, in any shape, except in certain special cases noticed hereafter, whether by taking the party or his family into the workhouse, or by giving them relief, either in money or kind, out of doors, or by employing them as parish labourers, at lower wages than other labourers receive, or probably even at the same rate, if the wages are paid out of the parish funds, would act as a disqualification. (Bedford case, C. & R. 75.) So also would the being sent to a lunatic asylum at the parish expense. (*Id.*)

It has, however, been held that a father is not a member of the son's family, and that relief given to the father is not parochial relief to the son, although he may be bound by law to support him. (See *R. v. Ireland*, 17 L. T. (N. S.) 466; and *McDowell's case*, 20 L. T. (N. S.) 309;) nor will relief given to a grandchild disqualify the grandfather. (*Kirk's case*, 20 L. T. (N. S.) 309.)

If a son is ordered to contribute a sum for the maintenance of his father, and which sum is not sufficient to maintain him, the excess of relief paid to the father by the parish, is not in law parochial relief to the son, so as to disqualify him as a voter. (See *Trotter v. Trevor*, 7 L. T. (N. S.) 678.)

**MEDICAL RELIEF.]** Although medical or surgical assistance given by the charitable trustees of the borough will not disqualify, medical relief given by the parish, whether by the administration of medicine or by the attendance of the parish surgeon upon the party himself, or upon his wife during her lying-in, or other

occasion, will have the effect of disqualifying. (See 1 Peck, 508.)

In some extraordinary instances of accident or public calamity, it was held by parliamentary committees, previously to the Reform Act, that temporary assistance provided by the parish did not affect the vote. Thus, persons whose children had been inoculated, or sent to a pest house, at the parish expense, at the request of the vestry, with a view to prevent the infection from spreading, were held not to be disqualified. (Arn. 98.) But since the Reform Act, the provisions of which are equally positive and unexceptional as those contained in the Municipal Corporations Act, committees have held that persons who received parochial medical relief during the prevalence of the cholera were disqualified. (Brocket's case, Bedford, C. & R. 80.) But the Vaccination Act of 30 & 31 Vict. ch. 84, s. 26, provides that vaccination or surgical or medical assistance incident to the vaccination performed or rendered by a public vaccinator shall not be considered as parochial relief, or a charitable allowance to the person or his parent, or deprive of any right or privilege, or subject to any disability or disqualification.

WIFE'S ADULTERY.] Relief given to a man's wife who is living in adultery will not disqualify; because, as the husband is under no legal obligation to maintain her under such circumstances, the relief is in no way an assistance to him. (See Rochester, K. & O. 114, and *R. v. Flintan*, 1 B. & Ad. 227.)

LOANS.] Pecuniary relief by way of loan, which is agreed by the parties to be treated as a debt, will not disqualify; (Newington's case, K. & O. 320). Whether a loan of medicine under 4 and 5 Will. 4, c. 76, s. 58, is relief, has not been decided, but in the Oldham

*Election Petition*, (20 L. T. (N. S.) 309,) where the parish officers had given to the voter a coffin, and some dues, under a promise that the amount should be paid back by a small weekly sum, which had been done, Blackburn, J., held, that the vote was good, expressing his readiness to reserve the point for the court of Common Pleas.



## CHAPTER IX.

### *Of the Burgess Lists.*

How FORMED.] In order to form the burgess roll, by the 15th section of the Municipal Corporation Act, the overseers of the poor of every parish, or the persons who execute the duties of overseers, are directed, on the 5th of September, (altered to the 1st September, by 20 & 21 Vict. ch. 50,) in every year, to make out an alphabetical list, according to the form given in the schedule, of persons entitled to be enrolled on the burgess roll in respect of property within the parish, (which list is to contain the name at full length of the party, the nature of the property rated, and the street, &c. where the property is situated, for which he is then rated); the overseers are also *to sign* such list; to deliver it on the same day to the town-clerk of the borough, or to the person executing the duties of town-clerk (M. C. s. 16), and to keep a true copy of it, to be perused by any person without fee, at all reasonable hours between that day and the 15th of September.

The provision under 20 & 21 Vict. ch. 50, s. 7, as to the list being delivered to the town-clerk on 1st September is imperative, and not directory only. (*Hunt v. Hibbs*, 1 L. T. (N. S.) 379.)

Every matter which by the Municipal Corporation Act, or any Act amending the same, is directed to be done by overseers, may be lawfully done by the major part

CLAIMS.] By the 17th section of the Municipal Corporation Act, any person whose name has been omitted from a burgess list, may, on or before the 15th September, give to the town-clerk a written notice in the form prescribed by the schedule to the Act claiming to have his name inserted therein; which notice must specify the premises occupied by the party, the parish in which he has been rated, and the period for which he has been rated; it should also be signed by the claimant, and state the place of his abode; and if the claimant has been rated in several parishes during the qualifying period the notice must state the time during which he has been rated in each parish. If any of these particulars be omitted, the notice will be informal and void, unless the error be such as is cured by the 142nd section, which enacts that no misnomer or inaccurate description of any person, body corporate, or place in any roll, list, notice, or voting paper shall hinder the full operation of the Act with respect to such person, body corporate or place, provided the description thereof be such as to be commonly understood. It seems, however, that this section cures only an inaccuracy in the name or description, and not a statement of a person, place of abode, &c. other than the real one, or an entire omission. (Rawl. 254, see *R. v. Coward*, 16 Q. B. 819; *R. v. Gregory*, 1 E. & B. 600; and *R. v. Spratley*, 6 E. & B. 363.)

It will be sufficient if the notice of claim be signed with the surname and the initial letter of the christian name. (See *R. v. Hartlepool*, 21 L. J. Q. B. 71; *R. v. Avery*, Id. 428; and the recent case of *R. v. Plenty*, 20 L. T. (N. S.) 521, and 33 J. P. 533.)

It has been held that a revising barrister cannot call upon the claimant under the Parliamentary Reform Act to prove his notice of claim where the same appears

in the list of claimants published by the overseers, this being a matter in which the overseers exercise a judicial office. (*Davies v. Hopkins*, 30 L. T. C. P. 152, see also *Barnett's case*, 7 Ir. C. L. 369.) But the *sufficiency* of the notice will, under the Municipal Corporation Act, be for the Revising Court to determine.

OBJECTIONS.] By the 17th section of the Municipal Corporation Act, any person whose name has been inserted in a burgess list may object to any other person as not being entitled to have his name *retained* therein; and for this purpose he is, on or before the 15th September, to give to the town-clerk, and also to the person objected to, or leave at the premises for which he shall appear to be rated in the list, a written notice of his objection in the form prescribed by the schedule; which notice is to describe the person objected to as described in the burgess list, to be signed by the objector, and to state his place of abode and the property for which he is said to be rated in the list.

A notice, signed "A. B., King's Quay Street, Harwich," was held to be insufficient from not mentioning the property for which the objector was rated. (*R. v. Harwich*, 8 A. & E. 919. See also 1 E. & B. 617.)

In *R. v. Wakefield*, 30 L. T. 273, a notice of objection was held to be good, which styled the person objected to as "Henry George" instead of "George Henry," the error arising from the names being alphabetically arranged in the burgess list, the surname being first as usual. The sufficiency of the description of the objector's place of abode is a question of fact for the decision of the Revising Court. (*Thackray v. Pilcher*, 15 L. T. (N. S.) 443, and *Jones v. Pritchard*, 33 J. P. 118.)

In *R. v. Mayor of Monmouth*, and *R. v. Mayor of Bolton*, 34 J. P. 566, it was held that a notice by an objector which did not state the *parish* in which the objector resided, nor describe the property in respect of which the name of the burgess objected to was inserted in the burgess list, was valid, there being a distinction (per Cockburn, C. J.) between the objector and the person objected to in this respect—the objector being required to state in his notice his name, place of abode, and the property (not the parish) for which he is rated according to the burgess list, but nothing being said about the qualification of the person objected to who is merely to be described. The court also held that the decision of the mayor and revising assessors was not conclusive as to the validity of the notice of objection, as they had in law declined to exercise jurisdiction by imposing a condition not authorized by the statute.

If the usual signature of the objector is engraved in *fac simile* on a stamp, and the objector by his own hand impresses the stamp upon the notice of objection, the notice will be good. (See *Bennett v. Brumfitt*, 17 L. T. (N. S.) 213.

It is to be observed that this Act does not give power to any person (a) to oppose the *claim* of another to have his name inserted in a burgess list; the right of objection being limited to the *retaining* of names upon the list. There was a similar defect in the Parliamentary Reform Act, but this was remedied by the Registration Act (6 Vict. ch. 18, s. 39), which gives to any person whose name is on a list of voters the power to oppose any claimant, upon giving a written

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(a) It is, however, usual for the mayor and revising assessors to hear the objection of any person on the burgess list. at the hearing of the claim to

notice to the revising barrister of his intention so to do.

LIST OF CLAIMS AND OBJECTIONS.] By the 17th section of the Municipal Corporation Act, the town-clerk is required to make a list of the claimants, which is to state the name of each claimant, the nature and situation of the property for which he is then rated, and the parish or parishes in which he has been rated, as stated in his claim.

He is also to make out a similar list of persons objected to, which is likewise to state the name of each such person, the nature of the property for which he is then rated, the situation of the property for which he is said to be then rated in the overseers' list, and the parish in which the property is situate for which he is so said to be rated.

He is to cause copies of such last-mentioned lists to be fixed on or near to the outer door of the town-hall, or in some public and conspicuous situation within the borough, during the eight days next preceding the 1st of October.

He is also to keep a copy of each list, to be perused by any person, without payment of any fee, at all reasonable hours during the same period, (Sunday excepted,) and to deliver a copy to any person requiring it upon payment of not exceeding one shilling for each copy.

By the 48th section the penalty of 50*l.* attaches to the town-clerk for refusing to print and publish such lists, as in the case of the lists delivered by the overseers, and also for refusing to allow such lists to be perused by any person having right thereunto, but no penalty is given for refusing to deliver a copy.. Such refusal would, however, subject the town-clerk to severe animadversion, and probably to an indictment or other criminal proceeding.

## CHAPTER X.

### *Revision of Burgess Lists.*

REVISING COURT.] The mayor and the two assessors elected as required by the Municipal Corporation Act, s. 37, and 1 Vict. ch. 78, s. 4, or the deputies of the assessors, in case of their illness or incapacity to act, (1 Vict. ch. 78, s. 17,) are required by the 18th section of the Municipal Corporation Act, to hold an open court in the borough, every year, between the 1st and 15th of October inclusive, for the purpose of revising the burgess lists, having first given three clear days' notice thereof, fixed on or near the outer door of the town-hall, or in some public and conspicuous situation in the borough.

The town-clerk, at the opening of the court, is to produce the burgess lists, and a copy of the lists of claimants and persons objected to.

The overseers, vestry clerks, and collectors of poor's rates of every parish, are to attend the court, and answer upon oath (or affirmation, s. 21,) all such questions as may be put to them touching any matter necessary for revising the burgess lists.

POWER OF COURT.] The mayor shall *insert* in the burgess lists the name of every claimant who shall be proved to the satisfaction of the court to be entitled to be inserted therein.

He shall *retain* the names of all persons to whom no objection shall have been duly made.

He shall *retain* the name of every person who shall have been objected to, unless the objector shall appear, either by himself or some one on his behalf in support of such objection.

He shall *expunge* the name of every person who shall have been duly objected to, where the objector does so appear, and the person objected to shall fail to prove his qualification to the satisfaction of the court.

He shall *expunge* the name of every person who shall be proved to be dead, (*i. e.*, whether objected to or not).

He shall *correct* any mistake or supply any omission which shall be proved to have been made in *any* of the lists in respect of the name or place of abode of any person, or of the local description of his property.

No person's name shall be inserted by the mayor in any such list or be expunged therefrom, except in case of death, unless notice shall have been given as herein required in each of the said cases. (M. C. s. 18.)

But the court would have power to expunge a name (as that of a woman, for instance, previously to the late Municipal Franchise Act) if legally incapacitated, without notice; (see *Wilson v. Salford*, 33 J. P. 7); but not, we think, infants and aliens. (See *Karenappuck's Case*, 20 L. T. (N. S.) 310.)

If the notice of objection be proved, it will be the duty of the revising court to require the qualification to be proved, although the objector may have previously published a notice withdrawing his objection. (*Proudfoot v. Barnes*, 15 L. T. (N. S.) 439.)

DUPLICATE QUALIFICATION.] If a burgess is rated for distinct premises, in two or more wards, he will be entitled to be enrolled and to vote in such one of such wards as he shall select, but not in more than one. (M. C. s. 44.)

No time is fixed by the Act within which the burgess is to make such selection. The proper time for making the selection is at the time of the revision of the burgess lists. (*R. v. Cambridge*, 28 L. J. Q. B. 10.) The usual course is for the burgess to send a written notice of his selection. Where this is not done, the practice in some boroughs is to leave the burgess on the list for the ward in which he resides, and to strike his name out of the other lists. In other boroughs, the practice is stated to be (see *Rawl.* 75) to summon the parties before the revising court to make the selection. If it should happen that the name remains on the burgess roll for two or more wards, the selection will be made by the voter at the election. (See *R. v. Morton*, 4 Q. B. 146, and *Arn.* 127.)

MANDAMUS.] By 1 Vict. ch. 78, s. 24, any person whose name shall have been expunged, or whose claim shall have been rejected by the court, may apply to the Court of Queen's Bench for a *mandamus* (a) to insert his name on the burgess roll. The party must be prepared to prove his whole title; (*R. v. Lichfield*, 2 Q. B. 693;) and where the applicant fails to do so, the rule will generally be discharged with costs. (*R. v. Bridgnorth*, 10 A. & E. 66.)

ADJOURNMENT.] By the 19th section the mayor is empowered to adjourn the court from time to time, so that no adjournment shall be held after the 15th of October.

OTHER POWERS.] The mayor may require (b) any overseer or other person having the custody of any

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(a) Whether the rule should be absolute in the first instance, see *R. v. Eye*, 9 A. & E. 670, and *R. v. Dover*, 11 Q. B. 260.

(b) It does not appear how this requirement is to be enforced in case of non-production of the rate book. (*Arn.* 109.)



poor rate book to produce the same, and allow it to be inspected; and has power to administer an oath, or an affirmation, (where by law allowed) to the town-clerk and overseers, and to all persons claiming or objected to, or making objections to any name, or claiming to have any mistake corrected, and also to all witnesses on either side. (M. C. s. 19.)

The mayor and assessors are to determine upon the the validity of all claims and objections, and the mayor is in open court to write his initials against each name struck out or inserted, and against every correction made in the lists, and also to sign his name to every page of the lists so settled. (M. C. s. 19.)

The mayor and assessors, in revising the lists, will have to consider and decide upon the validity of the various notices of claims and objections that are brought before them.

The form of these notices may be "to the like effect" with those given in the schedule to the Act, but any material variation from that form will render the notice nugatory.

The omission of any of the required particulars, such as the premises occupied by the party, the parish in which he has been rated, or if rated in more than one parish, of the several parishes in which he has been rated, or the place of his abode, will, it is conceived, invalidate a notice of claim (c).

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(c) It has been held that a revising barrister cannot, under the Reform Act, call upon a claimant to prove his notice of claim, where the name appears on the list of claimants published by the overseers, this being a matter in which overseers exercise a judicial office. (*Davies v. Hopkins*, 30 L. T. (C. P.) 152.) So, also, in an Irish case, (*Barnett's*, 7 Ir. C. L. R. 369,) an objection was made that the notice was not signed by the claimant, but the name having been published by the clerk of the peace in the list of claimants, it was held

So any material omission in a notice of objection will destroy its effect, and the party should not be heard in support of his objection, unless any error or misdescription is such as is cured by the 142nd section of the Municipal Corporation Act.

It is desirable that the notice of claim and notice of objection should be signed by the party himself and not by his agent, and it seems that the date of the day and month, without the year, would be insufficient. (Arn. 110.)

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that the revising barrister had no jurisdiction to inquire into the validity of the notice of claim under 13 & 14 Vict. ch. 69, ss. 22, 23, 55, (the Irish Reform Act.) It has been held that a notice of claim need not be signed by the claimant personally. (*O'Brien v. Fenton*, 15 Ir. C. L. R. 380.) Applying the principle of these decisions to the revision of the burgess lists, it would seem that

the mayor and revising assessors are precluded from inquiring into the *fact* of the notice of a claim or objection having been duly given to the town-clerk, if the same appears in the list published by him; but we conceive that it will be their duty to consider the sufficiency of the notice with reference to the requirements of the Act, and the form given in the schedule.

## CHAPTER XI.

### *Of the Burgess Roll and Ward Lists.*

BURGESS ROLL.] When the burgess lists have been revised and signed, the mayor is directed by the 22nd section of the Municipal Corporation Act to deliver them to the town-clerk, who is to keep them, and cause them to be fairly and truly copied into one general alphabetical list in a book, with every name numbered. This book is to be completed by the 22nd of October, and forms the burgess roll; or the roll of the burgesses entitled to vote in the election of councillors, assessors, and auditors, under the Municipal Corporation Act, ss. 30 to 37, at any election which may take place between the 1st of November inclusive, in the year when the roll shall have been made, and the 1st of November in the succeeding year; and no stamp duty is payable in respect of the admission, registering, or enrolment of any burgess.

WARD LISTS.] Where a borough is divided into wards, the burgess roll shall be made out in alphabetical lists of the burgesses in each ward, to be called "Ward Lists." (M. C. s. 45.)

COPIES.] The town-clerk is required to have written or printed copies of the burgess roll (which would include the "ward lists" above-mentioned) made every year; to be delivered to any person applying for the

same, on payment of a reasonable price for each copy and the monies arising from such sale, and also of the overseers' lists and lists of claims and objections, are to be paid over to the treasurer, and to be applied by him in aid of the borough fund, under section 92. (M. C. s. 23.)

**EXPENSES.]** By the 24th section of the Municipal Corporation Act, the expenses of the overseers, and by the 92nd section, the expenses of preparing and printing the lists and notices are charged upon the borough fund.

**WANT OF TITLE.]** The 5th section of the 1 Vict. ch. 78 enacts, that no burgess roll shall be questioned by reason of any defect or want of title of the mayor or assessors by whom the same shall have been revised, provided they were in actual possession of the office at the time of the revision; and the 6th section of the same Act provides that if from any neglect or informality a new burgess roll shall not have been made in any year within the time directed by the Municipal Corporation Act, the burgess roll previously in force shall continue to be so until a new burgess roll shall have been duly made. (See also Municipal Corporation Act, s. 53, and 20 & 21 Vict. ch. 50, s. 6.)

**MANDAMUS.]** Under the Municipal Corporation Act the decision of the mayor and assessors, either as to the rejection of a claim or the expunging of a name from the burgess list, was conclusive; but by 1 Vict. ch. 78, s. 24, it is enacted that any person whose claim shall have been so rejected or whose name so expunged may apply before the end of the then next term to the court of Queen's Bench for a *mandamus* to the mayor to insert his name upon the burgess roll, and for the court to inquire into his title to be enrolled, and if the court shall award such *mandamus*, the mayor is to

insert the name upon the burgess roll (a), and to add the words "By order of the court of Queen's Bench," and to subscribe his name thereto. The court have power upon every application to make such order with respect to costs as to the court shall seem fit.

This appears to be a very cumbrous, expensive, and dilatory machinery for effecting the object in view, and in many cases the municipal year will have expired before the question will have been determined.

A direct appeal to the court from the decision of the mayor, in the nature of the appeal from revising barristers to the court of Common Pleas, given by the Parliamentary Registration Act, would be preferable. (Arn. 115.)

The court will exercise their powers under this clause if they are satisfied that a party is entitled to be on the burgess roll, even though there was no burgess list before the mayor, upon which his name could have been inserted. (*R. v. Lichfield*, 1 Q. B. 453.)

Upon an application for a *mandamus* under this Act, the court will inquire into the whole title of the applicant, (*R. v. Harwich*, 8 A. & E. 919,) and it will not be sufficient for the applicant to show that his name was inserted by the overseers, and was expunged by the mayor on an objection, which, for want of legal notice, the party alleges ought not to have been heard.

The court will not limit their inquiry to the points raised before the mayor on the revision. (*R. v. New Windsor*, 7 Q. B. 908.)

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(a) This section speaks by mistake of "the revision of the burgess roll." But, as has been seen, it is the burgess *lists* that are revised, and from these, when revised, is formed the burgess roll. See by Lord Denman, C. J., in *R. v. Lichfield (Mayor)*, 1 Q. B. 461.

A person whose name had been omitted from the burgess list in consequence of his refusal to pay a borough rate, claimed to have his name inserted, but his claim was rejected by the mayor and assessors. Upon a motion for a *mandamus* to the mayor to insert the name on the burgess roll, the court, having inquired into all the circumstances of the case, decided that the applicant was not bound to pay the rate in question, and awarded a *mandamus*.

The *mandamus* is not peremptory in the first instance; and it will be directed to the mayor of the borough generally, though the mayor who presided at the revision court had gone out of office before the rule *nisi* was obtained. (*R. v. Eye, in re Neobard*, 9 A. & E. 670.)

If the rule is discharged, it will be with *costs*, upon the general principle that where a party, required by law to pronounce a decision on certain points, is brought before the court by a motion impugning such decision, he is entitled to costs if the application fails. (*R. v. Bridgnorth*, 10 A. & E. 66.)

QUO WARRANTO.] The law with respect to the removal of the name of a burgess from the burgess roll, will be found in a subsequent chapter.

## CHAPTER XII.

### *Of the Election of Councillors.*

COUNCIL.] The Council consists of the mayor, aldermen, and councillors, and the number of councillors is as specified in Schedules A. & B. to the Municipal Corporation Act, and the number of Aldermen is, by the 25th section, to be one-third of the number of councillors.

On the ninth day of November in every third year, the council are to elect from the councillors, or from the persons qualified to be councillors, the aldermen of the borough, or so many as shall be needed to supply the places of those who shall then go out of office; and in every third year, one-half of the number of the aldermen go out of office. (M. C. s. 25.) The councillors immediately after the first election of aldermen were to appoint who should go out of office in 1838, and thereafter those who should go out of office to be those who have been aldermen for the longest time without re-election. (M. C. s. 25.)

ORDINARY ELECTIONS.] The ordinary (a) election of councillors is to take place on the first day of November in every year, or, if that day be on Sunday, then on the following Monday. (M. C. s. 30.)

One-third of the number of councillors (M. C. s. 31) are to go out of office on that day, being those who

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(a) As to what irregularities on the part of the Returning Officer will be sufficient to in- validate a parliamentary election, see Warrington Election, 19 L. T. (N. S. 812.)

shall have been for the longest time in office without re-election; but in case any councillor shall have been elected to supply a vacancy, he will go out of office at the same time as the person would have done in whose place he shall have been elected.

**EXTRAORDINARY ELECTIONS.]** Extraordinary vacancies arising from the death, resignation, or removal of councillors before the expiration of their term of office, are by 16 & 17 Vict. ch. 79, s. 11, (amending the 47th section of the Municipal Corporation Act,) required to be held not later than ten days after notice thereof shall have been given to the mayor or town-clerk, by any two burgesses.

As the proceedings with respect to the nomination of councillors will be the same in all boroughs, but the subsequent proceedings will in some respects differ in boroughs not divided into wards from those in boroughs which are so divided, it will be convenient to arrange the subject-matter of this chapter under different heads; and we propose to set forth in the first place, the provisions of the Nomination Act, which applies to all boroughs,—then to show how, in the event of more than the required number of councillors being proposed, the election will be conducted, and then to give a succinct statement of the law with respect to Extraordinary Vacancies, Qualifications, Disqualifications, Bribery, Acceptance or Resignation of Office, and other questions relating to councillors.

1. *Nomination Act, (22 Vict. ch. 35.)*

**NOTICE OF ELECTION.]** Seven days at least, (*i. e.* clear days) before the day fixed for the election of



any (b) councillor or councillors, the town clerk shall prepare, sign, and publish (c) a notice in the Form contained in Schedule (B.) to this Act annexed, or to the like effect, by causing the same to be placed on the door of the town-hall, and in some other conspicuous parts of the borough or ward for which any such election is to be held. (22 Vict. ch. 95, s. 5.)

NOMINATIONS.] At any election of councillors to be held for any borough or ward any person (d) entitled to vote may nominate for the office of councillor himself (if duly qualified), or any other person or persons so qualified (not exceeding the number of persons to be elected for the borough or ward, as the case may be,) and every such nomination shall be in writing, and shall state the christian names and surnames of the persons nominated, with their respective places of abode and descriptions, and shall be signed by the party nominating, and sent to the town-clerk at least (e) two whole days (Sunday excluded) before the day of election; and the town-clerk shall at least one whole

(b) The provisions of this Act apply to the election of auditors and assessors. (See 32 & 33 Vict. ch. 55, s. 6, in *Appendix*.)

(c) This notice requires nominations to be delivered to the town-clerk by a given day, such day being at least two whole days (Sunday excluded,) before the day of election. If the day of election is on Tuesday the 28th, the notice must be published by Monday the 20th, the nominations delivered to the town clerk by Friday the 24th, and published by the town clerk on Saturday the 25th.

(d) The nominator must be entitled to vote in the ward for which the candidate is nominated. (*R. v. Parkinson*, 32 J. P. 244.)

(e) The town-clerk has no discretion to require the delivery of the Papers at an earlier period than two whole days before the election. (*R. v. Glover*, 15 L. T. (N. S.) 289.) Every nomination must be sent to the town-clerk, so that the same shall be received in his office before five o'clock in the afternoon of the last day on which any such nominations may by law be made. (32 & 33 Vict. ch. 55, s. 7.)

day (Sunday excluded) before the said day of election cause the christian names and surnames of the persons so nominated, with such statement of their respective places of abode and descriptions, and with the names of the party nominating them, respectively to be printed and placed on the door of the town-hall, and in some other conspicuous parts of the borough or ward for which such election is to be held ; (*Id.* s. 6;) and any Nomination Paper may be in the form contained in the Schedule to this Act annexed, or to the like effect ; and the town-clerk shall provide so many Nomination Papers as may be required, and, at the request of any person entitled to nominate, shall fill up a Nomination Paper in due form : provided nevertheless, that such Paper shall be signed by the person nominating. (*Id.* s. 7.)

ELECTION.] At any Election of Councillors for any borough or ward :

1. If the number of persons so nominated shall exceed the number to be elected,

The councillors to be elected shall be elected from the persons so nominated, and from them only.

2. If the number of persons so nominated shall be the same as the number to be elected,

Such persons shall be deemed to be elected ; and the mayor or alderman and two assessors, as the case may be, shall publish a list of the names of the persons so elected, not later than eleven of the clock in the morning of the said day of election :

3. If the number of persons so nominated shall be less than the number to be elected,

Such persons shall be deemed to be elected ; such of the retiring councillors highest on

the poll at their election, or, if the poll were equal, or there were no poll, such as shall be nominated by the mayor, shall be deemed to be re-elected to make up the number required to be elected: and the mayor or alderman and two assessors, as the case may be, shall publish a list of the names of all the persons so elected respectively, not later than eleven of the clock in the morning of the said day of election:

4. If no persons be so nominated,

The retiring councillors shall be deemed to be re-elected, and the mayor or alderman and two assessors, as the case may be, shall publish a list of the names of all the persons so elected, not later than eleven of the clock in the morning of the said day of election. (*Id.* s. 8.)

PERSONATION.] If, pending or after any election of councillors, auditors, or assessors, any person shall personate or induce (*f*) any other person to personate any person entitled to vote at such election, or whose name is on the burgess roll then in force, or falsely assume to act in the name or on behalf of any person so entitled to vote, or wilfully make a false answer to any of the questions mentioned in section (*g*) eighteen

(*f*) The offence is complete when the personator hands in the Voting Paper to the presiding officer; and it is immaterial that he answers "no" when questioned whether he is the voter. The conviction for inducing any other person to personate need not set out the means of inducement. (*R. v.*

*Hague*, 9 L. T. (N.S.) 648.) Under the 14 & 15 Vict. ch. 105, s. 3, personation at the election of guardians, where the party personated is dead, is not an offence. (See *Whitely v. Chappell*, 33 J. P. 244.)

(*g*) This is an error, there being no such section in the Act. The questions which can

of this Act, he shall for every such offence be liable on conviction before two justices in petty sessions, to be imprisoned in the common gaol or house of correction for any period not exceeding three months, with or without hard labour. (*Id.* s. 9.)

FORGING PAPERS.] If before, pending, or after any election of councillors, auditors, or assessors, any person shall wilfully fabricate, in whole or in part, alter, deface, destroy, abstract, or purloin, any Nomination or Voting Paper after the same shall have been duly filled up, he shall for every such offence be liable, on conviction before two justices in petty sessions, to be imprisoned in the common gaol or house of correction for any period not exceeding three months, with or without hard labour. (*Id.* s. 10.)

BRIBERY.] If any person at any election of mayor, councillors, auditors, or assessors for any borough shall be guilty of Bribery, he shall for every such offence forfeit the sum of forty shillings to any person who shall sue for the same in the county court, with full costs of suit; and any person offending in any case in which, under the Act or Acts for the time being in force with respect to the election of members to serve in parliament for boroughs in England and Wales, the name of the offender may be expunged from the list of voters, being lawfully convicted thereof, shall for the term of six years be disabled to vote in any election in such borough, or in any municipal or parliamentary election whatever, in any part of the United Kingdom (*h*), and shall for such term be

be put to a voter are contained in the 34th sect. of 5 & 6 Will. 4, ch. 76. This being the case, a question arises whether a conviction for a false answer could be sustained.

(*h*) A conviction in the

county court for Bribery at a municipal election does not create a six years' disability to hold any municipal office. (*R. v. Wray*, 12 L. T. (N. S.) 270.) This decision seems to be at variance with the intention of

disabled to hold, exercise, or enjoy any office or franchise to which he then shall or at any time afterwards may be entitled as a burgess of such borough, as if such person were naturally dead. (*Id.* s. 11.) And the word "Bribery" shall include anything committed or done before, at, after, or with respect to the election of any mayor, councillors, auditors, or assessors, which, if committed or done before, at, after, or with respect to any election of any member to serve in parliament, would render the person committing or doing the same liable to any pains, penalties, forfeitures or conviction for Bribery, treating, (i) undue influence, corrupt practices, or (k) other offence, under any Act or Acts for the time being in force with respect to the

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the Legislature. The 54th section of the Municipal Corporations Act, (see *post*, 114,) also imposes a penalty of 50*l.* on any person having a right to vote at a municipal election, committing any of the offences there mentioned.

(i) As to what will constitute agency, or be treating, or corrupt practice at a parliamentary election, see 19 L. T. (N. S.) 615, 618, 676, 723, 729, and 766, Election Petition Cases; and Bodmin Election, 20 L. T. (N. S.) 989; and as to what treating by a candidate at a meeting of burgesses about an impending election was considered to be with a view to influence the election, and was, therefore, deemed "a corrupt practice" under "The Elementary Education Act, 1870," see *Turnbull v. Welland*, 24 L. T. (N. S.) 730.

(k) By 30 & 31 Vict. ch. 102, s. 36, it is rendered unlawful for any candidate, or any one

on his behalf at any parliamentary election for any borough (except East Retford, Shoreham, Cricklade, Much Wenlock, and Aylesbury,) to pay any money on account of the conveyance of any voter to the poll, either to the voter himself or to any other person; and any money so paid is thereby declared to be an illegal payment within "The Corrupt Practices Prevention Act, 1854." The payment of money for cabs, or other conveyances for voters at a municipal election will therefore, it is conceived, be an offence under the 12th section of this Act. (See 17 & 18 Vict. ch. 102, s. 2, as to Bribery of parliamentary voters.) A promise that the voter "should be remunerated for loss of time," was held to amount to bribery, in *Simpson v. Yeend*, W.N. 10th July, 1869; see also Guildford Election, 19 L. T. (N.S.) 729.

election of members to serve in parliament for boroughs in England and Wales. (*Id.* s. 12.)

APPEAL.] Any person who shall think himself aggrieved by any conviction under this Act may appeal to the next quarter sessions of the peace for the county within which is situate the city or borough in which such conviction took place, first giving reasonable notice to the mayor and justice or justices of the peace, as the case may be, of his intention so to do, and entering into recognizance to pay such costs as may be awarded against him. (*Id.* s. 13.)

LIMITATION OF TIME.] All proceedings for enforcing any pains, penalties, forfeitures, or convictions under this Act shall be commenced within six calendar months from the time when the matter of such proceedings arose. (*Id.* s. 14.)

SHORT TITLE AND EXTENT.] This Act may be cited for any purpose as "The Municipal Corporation Act, 1859." (*Id.* s. 15,) and applies to every city, borough, and town Corporate specified in the Schedules to the Municipal Corporations Act, and to every Municipal Corporation in England and Wales erected after the passing of that Act, and whether erected by charter under that Act or otherwise, and shall be construed and executed as if its provisions formed part of that Act, and the Acts from time to time in force amending or extending that Act. (*Id.* s. 16.)

## *2. Elections in Boroughs, not divided into Wards.*

BEFORE WHOM.] Where a borough is not divided into wards, the election is to be held before the mayor and assessors of the borough. (M. C. s. 32.)

In case of the death, or absence, or other incapacity

of the mayor at any election, the council are forthwith to elect one of the aldermen to execute all powers and duties of the mayor with respect to the election, in the place of the mayor, (M. C. s. 36.)

Every assessor, as soon as conveniently may be after his election, is to appoint in writing a deputy, who is to act for him in case of his illness, or incapacity to act at any election, or any revision of the burgess lists. (1 Vict. ch. 78, s. 17.)

The fact of the assessor being a candidate, will, it seems, be an "incapacity to act" at the election, so as to enable the deputy to officiate in his place. (*See R. v. White*, 16 L. T. (N. S.) 828, p. 117, *post.*)

If an extraordinary vacancy shall happen in the office of assessor, and at the same time a vacancy shall exist or arise in the office of councillor, which cannot be legally filled up before the vacant office of assessor has been or can be by law filled up, the election to supply such vacant office of councillor shall be held before the alderman of the ward, or the mayor, where the borough is not divided into wards, the continuing assessor, and such burgess (not being a burgess representing or enrolled on the burgess list for that ward, if the borough is divided into wards,) as the mayor shall by writing under his hand appoint. (32 & 33 Vict. ch. 55, s. 8.)

BOOTHS.] The mayor has power under the Municipal Corporation Act, s. 33, to cause polling booths to be erected, or to hire rooms for taking the poll for different parts of the borough, which may be situate in one place, or in several places, and may be divided and allotted into compartments as shall seem to him most convenient

The mayor is required to appoint a clerk to take the poll at each compartment, and shall cause to be affixed

on the most conspicuous part of each of the said booths the names of the parts for which such booth is respectively allotted; and no person shall be admitted to vote at any such election except at the booth allotted for the part wherein the house, warehouse, counting house or shop (or "other building," see M. F. s. 1,) occupied by him as described in the burgess roll may be; but in case no booth shall happen to be provided for any particular part as aforesaid, the votes of the persons voting in respect of property situate in any part so omitted may be taken at any of the said booths; and public notice of the situation, division, and allotments of the different booths shall be given two days before the commencement of the poll by the mayor; and in case the booths shall be situated in different places, the mayor may appoint a deputy to preside at each place; provided also, that no election shall be holden under this Act in any borough in any church, chapel, or other place of public worship. (M. C. s. 33.)

TIME OF POLL.] The voting at the election is to commence at 9 A.M., and finally to close at 4 P.M. (M. C. s. 32), or it may be closed earlier, if one hour shall have elapsed without a vote having been tendered, unless any voter shall have been prevented during the last hour from coming to the poll by any riot, violence, or other unlawful means, of which notice shall have been given to the returning officer. (1 Vict. ch. 78, s. 18.)

VOTERS.] The right of election is vested in the burgesses whose names appear on the burgess roll; (M. C. s. 29;) and every voter is entitled to vote for as many persons as there are councillors to be chosen at that election; (M. C. s. 32;) and if a burgess votes for more persons than are to be chosen, his votes are thrown away. (*R. v. Leeds*, 7 A. & E. 963.)

MODE OF VOTING.] The method of voting is for



the voter to deliver to the presiding officer a voting paper, containing the christian names and surnames of the persons for whom he votes, with their respective places of abode and descriptions, previously signed with the name of the voter, and the name of the street, lane, or place where the property for which he appears to be rated on the burgess roll is situated. (M. C. a. 32.)

The voting paper may be signed by the voter by his surname, and the initial letter of his christian name. (*R. v. Avery*, 21 L. J. Q. B. 428; see also *R. v. Hartlepool*, 21 L. J. Q. B. 71, where the signature to a claim thus signed was held to be sufficient.) But in *R. v. Bradley*, 3 L. T. (N. S.) 853, it was held that the christian name of the candidate must be written either in full, or with a known and well understood contraction (as Wm. for William), the court considering that the 32nd section, which uses the words "christian names and surnames" of the persons voted for, required a greater degree of particularity than in the signature of the voter, who is required to sign his "name" only. This refined distinction, however, no longer exists, it having been held in the recent case of *R. v. Plenty*, 20 L. T. (N. S.) 521, and 33 J. P. 533, that the description of a candidate by his initials only as "E. P. Plenty" is sufficient, that at the worst it was only a misnomer; and that the word "misnomer" in the 142nd section of the Municipal Corporation Act was wide enough to cover the faulty indication of the christian name by means of the initials, and cured by that section.

The signature of the voter must be connected with the name of the street or other place in which the property for which he appears on the burgess roll to be rated is situate. (*R. v. Tart*, 32 L. T. 314, and 28 L. J. Q. B. 173.)

An inaccurate description of the qualifying property in a voting paper, if it be such as to be commonly understood, will be cured by the 142nd section of the Municipal Corporation Act. (*R. v. Spratley*, 27 L. T. 102, and 6 E. & B. 363.)

QUESTIONS AT POLL.] No inquiry is to be permitted at the election as to the right of any person to vote as a burgess, except the following questions, which the presiding officer, if required to do so by two burgesses entitled to vote, is to put to the voter at the time of delivering in his voting paper, and no other:

"Are you the person whose name is signed as A. B. to the voting paper now delivered in by you?"

"Are you the person whose name appears as A. B. on the burgess roll now in force for this borough, being registered therein as rated for property described to be situated in —?"

"Have you already voted at the present election?" (M. C. s. 34).

If the presiding officer should ask any other question than the foregoing from a corrupt motive, the court of Queen's Bench will, it seems, grant a criminal information against him. (Arn. 124.)

If any person shall wilfully make a false answer to any of these questions, he may be indicted for a misdemeanor (M. C. s. 34. See *R. v. Dodsworth*, 8 C. & P. 218.)

### 3. *Elections in Boroughs divided into Wards.*

BEFORE WHOM.] Where a borough is divided into wards (a), the election is to take place before the

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(a) Certain large boroughs, divided into wards. The boundaries of the wards, and also the number of councillors for each

alderman whom the councillors chosen in each ward shall yearly appoint in that behalf, and before the two assessors of such ward. (M. C. s. 43.)

In case of the illness or incapacity to act of any alderman at any election, the mayor may appoint another alderman to act in his room during such illness or incapacity, (1 Vict. ch. 78, s. 16.)

Where the number of aldermen in any borough does not exceed the number of wards, the mayor shall, in case of the illness or incapacity of the alderman, appoint a councillor, (not being a councillor representing or enrolled on the burgess list for the ward within which the election is to take place), to preside at such election. (16 & 17 Vict. ch. 79, s. 10.)

PROCEEDINGS.] The proceedings at ward elections are to be conducted in the same manner as at elections of councillors for a borough not divided into wards; and the alderman and assessors of the ward have the same powers as to ward elections as the mayor and assessors for the whole borough, if not divided into wards. (M. C. s. 43.)

As the mayor of a borough not divided into wards may, under the 33rd section of the Municipal Corporation Act, appoint several polling places and poll-clerks, and a deputy to preside at each place, and as the alderman and assessors have the same powers in ward elections as the mayor and assessors at elections for the whole borough, they will, it is conceived, have

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ward were determined by the barristers appointed to revise the burgess lists at the first revision. (M. C. ss. 39, 40, 41.) Power to alter the wards is given to Her Majesty in Council by 22 Vict. ch. 35, ss. 1 to 4, but it is provided by 32 & 33

Vict. ch. 55, s. 4, that when any borough containing less than four wards shall thereafter be divided into a greater number of wards, the qualification for an alderman or councillor shall not be increased or altered.

power to appoint two or more polling places in their ward, if the number of voters is sufficiently large to require them so to do, and a poll-clerk and deputy for each place. (See 33 *J. P.* 238.) This course is in many cases essential to enable the burgesses to poll within the prescribed time, and, by affording proper facilities for access to the poll, to prevent any interruption of the public peace.

In ward elections, burgesses are entitled to vote in that ward in which the property for which they appear to be rated on the burgess roll is situated; (*M. C. s. 44*;) and if a burgess is rated for distinct premises in two or more wards, he will be entitled to be enrolled and to vote in such one of such wards as he may select, but not in more than one. (*M. C. s. 44*.)

No time is fixed by the Act within which a burgess is to make such selection. The proper time for making it is at the revision of the burgess lists. (*R. v. Cambridge*, 28 *L. J. Q. B.* 10.) The usual course is for the burgesses having more than one qualification to send a written notice of their selection to the revising court. When this is not done, the practice in some boroughs is to leave the name of the burgess on the ward where he resides, and to strike his name out of the other lists. In other boroughs the practice is stated to be (see *Rawl. 75*,) to summon the parties before the Revising Court to make their selection. If it should happen that the name remains on the burgess roll for two or more wards, the selection will be made by the vote. (See *R. v. Morton*, 4 *Q. B.* 146, and *Arn. 127*.)

#### 4. *Proceedings subsequent to Election.*

RESULT OF ELECTION.] When the election is concluded, the mayor and assessors, or aldermen and

assessors (as the case may be,) are, in case of a contest, to examine the voting papers, and to declare the result. If there shall not be any contest, the result is declared in the manner prescribed by the Nomination Act of 22 Vict. ch. 35, s. 8. (*Ante*, p. 95.)

The duty of the returning officer is purely ministerial, and they are not, it seems, required to notice whether the persons elected are qualified or not, or even whether their names are on the burgess roll—this (to use the homely words of Pattison, J., in *R. v. Ledgard*, 8 A. & E. 545,) “is no business of theirs.”

EQUALITY OF VOTES.] In case of an equality of votes, the mayor and assessors, or any two of them, or in ward elections the alderman and assessors, or any two of them, shall name from those who have an equality of votes, so many as shall be necessary to complete the requisite number of persons to be chosen, (M. C. s. 35.)

VOTING PAPERS.] The mayor is to cause the voting papers to be kept in the office of the town-clerk for six calendar months at the least after the election. (M. C. s. 35.) The 1 Vict. ch. 78, s. 14, directs that the voting papers at the election of aldermen shall be kept among the (b) records of the borough, and this is the proper course as to voting papers for councillors.

Any burgess may inspect the voting papers of any year on payment of one shilling. (M. C. s. 35.) The town-clerk is not, it seems, compellable to allow two burgesses to inspect the voting papers at the same time, or to give more than one of the papers to one person at the same time; but he is bound to allow any

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(b) As to the evidence necessary on a trial of a writ of *quo warranto* to identify the voting papers. (See *R. v. Ledgard*, 8 A. & E. 535, and Arn. 149.)

burgess who brings a list of his own to compare it with the papers produced, and to mark it according to what he finds there. (*R. v. Arnold*, 4 A. & E. 657, and *R. v. Blagg*, 10 Jur. 983.)

PUBLICATION.] If there shall have been a poll, the mayor, or in boroughs divided into wards, the alderman and assessors are to publish a list of the persons elected not later than two o'clock in the afternoon of the day next but one following the day of election, unless such day be Sunday, and then on the Monday following; (M. C. s. 35;) but if there shall not have been a contest, then under the Nomination Act of 22 Vict. ch. 35, s. 8, the notice must be given not later than Eleven o'clock on the morning of the day of election. (See p. 96, *ante*.)

Where the publication was duly made after a contested election, and after two o'clock, the returning officer discovered a supposed error in counting the votes, and signed and published a second list, it was held that such second publication was invalid, and that the party whose name was first published was duly elected. (*R. v. Leeds*, 11 A. & E. 512.)

Where the publication had not been made on the right day, the court of Queen's Bench held that they had no authority to grant a *mandamus* to make the publication, and to swear in the party whose name ought to have been published as having been duly elected. (*Re Carmarthen*, Q. B., M. T. 1845, and Arn. 150.)

If the election of any corporate officer should not take place on the appointed day, it may be held upon the following day, unless it should be Sunday, and then on the Monday following; (1 Vict. ch. 78, s. 25;) and if from any cause the election of a corporate officer shall not have taken place on the day or within the

time limited by the statute, or if an election afterwards becomes void by default or accident, the court of Queen's Bench may award a *mandamus* in the same manner as under the 11 Geo. 1, ch. 4, in the event of there being no election. (*Id.* s. 26.)

The court will also grant a *mandamus* to proceed to an election, although one may have taken place *de facto*, if it appears to have been merely colourable, or otherwise void. (See *R. v. Winchester*, 7 A. & E. 215, and *R. v. Leeds*, 7 A. & E. 964.)

DOUBLE ELECTION.] If a person is elected a councillor or assessor for more than one ward, he is to choose within three days after notice thereof, for which ward he will serve; and in default of his doing so, the mayor is to declare for which ward he shall serve. (M. C. s. 46.)

### 5. *Vacancies.*

EXTRAORDINARY.] In the event of any extraordinary vacancy occurring in the office of councillor, the mayor, or, if the vacancy takes place in a borough divided into wards, then the alderman of the ward, is to fix a day on which a fresh election is to take place, not being later than ten days after the vacancy; (M. C. s. 47;) now not later than ten days after notice shall have been given to the mayor or town-clerk by any two burgesses. (See 16 & 17 Vict. ch. 79, s. 11.)

The election is to be conducted in the same manner as already stated in the case of an ordinary election, and the person elected at such occasional election is to remain in office until the time at which the person in whose room he was chosen would regularly have gone out of office; but he will be capable of re-election, if duly qualified. (M. C. s. 47.)

In every case in which more than one extraordinary vacancy has to be supplied in this manner, the councillor elected by the smallest (z) number of votes shall be taken as elected in the room of the party who would regularly have first gone out of office; and the councillor elected by the next smallest number in the room of him who would have next gone out of office, and so with respect to the others. (1 Vict. ch. 78, s. 11, and Rowl. 342.) It is, however, undesirable to appoint the election on the occasion of two extraordinary vacancies on the same day.

If an election is held to supply ordinary and extraordinary vacancies at the same time, (a course not to be recommended,) care must be taken to preserve a distinction between the two classes of candidates throughout the whole proceeding; Pattison, J., saying, in *R. v. Rowley*, 3 Q. B. 148, that an elector may give votes for all the candidates on the same paper, only making the proper distinction as to the vacancies to be supplied; but on the hearing of a writ of error in the Exchequer Chamber several of the judges expressed a strong opinion that councillors to fill occasional and regular vacancies ought not to be chosen at one and the same election. (*Rowley v. The Queen*, 6 Q. B. 668.)

### *6. Qualifications of Councillors.*

QUALIFICATIONS.] The qualifications for an alderman or councillor are under the 28th section of the Municipal Corporation Act, as follows:

1. Being entitled to be on the burgess list of the borough; (M. C. s. 28;) and under 32 & 33 Vict.

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(z) It is doubtful whether the 11th section of the 1 Vict. ch. 78, is not entirely retrospective, or whether the first part is retrospective and the other part prospective.



ch. 55, s. 3, any occupier who shall be rated as required by that Act shall be entitled to be elected a councillor or alderman, if resident within fifteen miles of the borough, although by reason of his residence beyond seven miles, he is not entitled to be on the burgess roll, if he shall be (a) otherwise qualified to be on the burgess roll and to be elected a councillor or alderman.

It is not required by the Municipal Corporation Act that the party should be actually on the burgess list (or roll), but merely that he should be *entitled* to be so. The words "entitled to be on the burgess list" have been the subject of consideration in two cases,—1, in *R. v. Dixon*, 15 Q. B. 33, when it was held that a councillor who was on the burgess list at the time when he was elected, but whose name was in a subsequent year omitted from the burgess list, and therefore not on the burgess roll, was qualified to act as mayor; and, 2, in *Whalley v. Bramwell*, 15 Q. B. 775, when it was held that a householder who retained the necessary qualifications of occupation and rating, but whose name had been improperly expunged from the burgess list by the mayor and assessors, was entitled to be on the list within the meaning of the section, and qualified to act as councillor. The *right* to be on, and not the fact of being on the list constitutes the qualification.

2. Possessing real or personal estate or both, to the following amount:

In boroughs divided into four or more wards, 1000*l.*,

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(a) The overseers are required to make out a separate list of such occupiers as are qualified to be elected councillors or aldermen by virtue of

the third section of the Municipal Franchise Act, and which is to be revised in like manner as the burgess list.

or being rated to the poor rate upon the annual value of not less than 30*l*.

In boroughs divided into less than four wards, or not divided into wards, 500*l*., or being rated to the poor rate upon an annual value of not less than 15*l*. (M. C. s. 28.)

The words "annual value" mean *rateable value*, and not the gross estimated rental. (See *Baker v. March*, 19 J. P. 117.)

### *7. Disqualifications of Councillors.*

DISQUALIFICATIONS.] The disqualifications are as follows:—

1. Being in holy orders, or the "regular minister" of any dissenting congregation. (M. C. s. 28.)

Persons who occasionally preach, or temporarily supply a vacancy, but are not the stated ministers of a dissenting place of worship, would not come within the disqualification. The words of the section point to a person who is not merely a clergyman of the dissenting body, but to one who is *de facto* the minister of a congregation in a position analogous to that of a beneficed clergyman. The appointment should, it seems, be one of a permanent character, incompatible with the performance of the duties of a town-councillor. (See *R. v. Oldham*, 33 J. P. 437.)

2. Holding any office (*b*) or place of profit, other than that of mayor, in the gift or disposal of the

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(*b*) A councillor or alderman cannot be appointed or continue as clerk to the justices, but a clerk to the justices may be elected a councillor, he not holding any office of profit in the gift of the council, but the justices cannot continue him in his office. (M. C. s. 102.)

council, (M. C. s. 28,) such as that of town-clerk or treasurer, (s. 58), or registrar of a court of record, (s. 119,) or surveyor, or other office of profit.

The office of sheriff is not to be deemed an office of profit, so as to create a disqualification. (5 & 6 Vict. ch. 104, s. 8.)

It does not appear that the partner of a person holding a place of profit is disqualified, unless he is personally interested in the profits of the appointment.

3. Having directly or indirectly, by himself or his partner, any share or interest in any contract (*b*) or employment with, by, or on behalf of the council, (M. C. s. 28.)

It is, however, provided by the 28th section of the Municipal Corporation Act, that no person shall be disqualified by reason of his being a proprietor or shareholder of any company which shall contract with the council for lighting, or supplying with water, or insuring against fire any part of the borough; and by 32 & 33 Vict. ch. 55, s. 5, it is enacted, that no person shall be deemed to have had or to have an interest in a contract or employment with, by, or on behalf of the council of any borough by reason only of his having had or having a share or interest in any railway company, or in any company incorporated by Act of Parliament or by royal charter, or under "The Companies Act, 1862;" and that no councillor, alderman, or mayor in any municipal corporation shall be deemed to have been or to be disqualified to be elected, or to be such councillor, alderman, or mayor by reason only of his having had or having any share or interest in any railway company or in

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(*b*) See also 1 Vict. ch. 78, for building or repairing the a. 39, as to a corporate officer borough gaol.  
being interested in a contract

any company incorporated by Act of Parliament or royal charter, or under "The Companies Act, 1862," but that all elections of councillors, aldermen, or mayors as aforesaid shall be deemed and taken to have been and to be valid, notwithstanding any such share or interest.

With respect to newspaper proprietors, it is enacted by 15 Vict. ch. 5, s. 1, that no person shall be deemed to have an interest in a contract or employment by reason *only* of his having a share or interest in any newspaper in which any advertisement relating to the affairs of the council or borough may be inserted. This provision will not allow the proprietors of newspapers to enter into contracts for printing or for supplying stationery or other articles.

To prevent the inconvenience which resulted from the strict interpretation of the words "contract or employment" in the cases of *R. v. York*, 2 Q. B. 847, and *Simpson v. Ready*, 12 M. & W. 736, in which it was held that they are not confined to such contracts only as partake in some degree of the nature of employments, as a contract for work, or the furnishing of supplies, but are to receive their ordinary legal construction, the statute of 5 & 6 Vict. ch. 104, was passed. By this Act (s. 1) it is enacted that the word "contract" shall not extend or be construed to extend to any lease, sale, or purchase of any lands, tenements or hereditaments, or to any agreement for any such lease, sale, or purchase, or for the loan of money, or to any security for the payment of money.

To guard against abuse it is however provided by the second section that it shall not be lawful for any member of the council of any borough to vote or take part in the discussion of any matter before the council, in which he shall, directly or indirectly, by himself or his partner or partners, have any pecuniary interest.

A member of a council contracting to supply articles to a person who is under a contract on his own account to do work or supply materials, as, for instance, iron rails to the council, has not an interest in a contract within the meaning of this section, if they are supplied in the ordinary course of business; (see *Le Feuvre v. Lankester*, 3 E. & B. 530;) but if it should appear that there was any previous concert or arrangement between the contractor and a councillor that the latter should have the benefit of the contractor's custom in supplying goods for the performance of the contract, this would, it is conceived, be a disqualification.

It may be observed, that if the contract shall have been executed, the mere fact of the money not having been paid at the time of the election of a councillor, will not cause a disqualification. (See *Royse v. Birley*, Q. B. 6th May, 1869.)

An invoice of goods is evidence from which a jury may infer that the defendant was concerned or participated in a contract. (See *Nicholson v. Fields*, 7 H. & N. 810.)

#### 4. *Being Guilty of Bribery.*

Under the Municipal Corporation Act, s. 54, it is enacted, that any person convicted of bribery (as thereby defined) shall for ever be disabled to vote in any election, in the borough, or in any parliamentary or municipal election in any part of the kingdom, and be disabled to hold any office or franchise to which he then shall or at any time afterwards may be entitled as a burgess. The party is also liable (a), on conviction, to a penalty of 50*l.*, recoverable in one of the superior

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(a) The 55th section indemnifies any offender from penalties and disabilities, if he shall within twelve months after the election, and previous to his conviction, discover any person so offending, so that he shall be convicted of the offence.

courts, such action to be commenced within two years after the commission of the offence. (M. C. ss. 54, 56.)

The offence of bribery is defined by the 54th section to consist in asking or taking any money or other reward by way of gift, loan, or other device, or agreeing or contracting for any money, gift, office, employment, or other reward whatever to give or forbear to give his vote at any election of mayor, councillor, auditor, or assessor; or (by himself or any person employed by him,) by any gift or reward, or any promise, agreement, or security for any gift or reward, corrupting or procuring, or offering to corrupt or procure any person to give or forbear to give his vote in any such election.

The corrupt employment of a voter in hauling stone at certain hire, is a *reward* within the meaning of the Act; (*Harding v. Stokes*, 1 M. & W. 354; see also *R. v. Thwaites*, 1 E. & B. 704;) and it has been held under the Parliamentary Bribery Act of 2 Geo. 2, ch. 24, that by giving money to a voter to induce him to vote, the offence of *corrupting* is complete, although the voter did not give his vote in the manner bargained for, and might never have intended to do so. (*Henslow v. Fawcett*, 3 A. & E. 51.)

Under the Municipal Corporation Act, the mere *offering* a bribe, although it is not accepted, may be an offence, and it is a question for the jury whether there was a complete agreement or not. (*Harding v. Stokes*, 2 M. & W. 233.)

In addition to the provisions contained in the Municipal Corporation Act with respect to bribery, the offences of bribery and personation are punishable under the Nomination Act of 22 Vict. ch. 35, ss. 9, 10, 11, and 12, and which will be found in a previous part of this work (see *ante*, p. 97). In an action brought under the 11th section of this Act, it was

held (*Simpson v. Yeend*, W. N., 10th July, 1869) that a promise of remuneration for loss of time was bribery within the meaning of that section. (See Guildford Election, 19 L. T. (N. S.) 729.)

### 9. *Other Disqualifications.*

**BANKRUPTCY.]** A bankrupt is not disqualified from being elected a councillor, but if, whilst holding the office of mayor, alderman, or councillor, any person shall be declared bankrupt, or apply to, or take the benefit of any Act for the relief of insolvent debtors, or shall compound by (a) deed with his creditors, he shall thereupon immediately become disqualified, and cease to hold such office, (*R. v. Chitty*, 5 A. & E. 609,) although he may be re-elected upon obtaining his certificate, or paying his debts in full, if otherwise qualified. (M. C. s. 52.)

**ABSENCE.]** If a councillor shall be absent from the borough for more than six calendar months at one and the same time, (unless in case of illness,) he will become disqualified, and cease to hold his office, and be liable to the same fine as if he had refused to accept the office. (M. C. s. 52.)

**PROCEDURE.]** After any of the above mentioned causes of disqualification, the council is forthwith to declare the office to be void, and signify the same by notice in writing under the hands of three or more of the council, countersigned by the town-clerk, and

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(a) By the 21st section of "The Debtors Act, 1869," (32 & 33 Vict. ch. 62,) it is enacted, that the provisions of the 52nd and 53rd sections of the Municipal Corporations Act as to the disqualification of mayors, aldermen, and town councillors, by having been de-

clared bankrupt, or having compounded by deed with their creditors, shall extend to every arrangement or composition by a mayor, alderman, or councillor with his creditors under the Bankruptcy Act, 1869, whether the same is made by deed or otherwise.

affixed in some public place within the borough, and thereupon the office will become void. (M. C. s. 52, see *R. v. Oxford*, 6 A. & E. 349, and *R. v. Leeds*, 7 A. & E. 963.)

RETURNING OFFICER.] *The mayor is disqualified* from being elected a councillor of any borough for which he, with the assessors, is returning officer; (*R. v. Owens*, 33 L. T. 257;) but the council may, under the Municipal Corporations Act, s. 36, elect one of the aldermen to execute the powers and duties provided by the Act with respect to elections, in the place of the mayor, if he should be dead, absent, or otherwise incapable to act; and in *R. v. White*, 16 L. T. (N. S.) 828, and 31 *J. P.* 595, it was held that the fact of the mayor being a candidate at the election, is an "incapacity to act" within the meaning of this section.

10. *Acting without being qualified.*

PENALTIES FOR ACTING, &c.] If any person shall act as mayor, alderman, councillor, auditor, or assessor without having made the declaration required by the 50th section of the Municipal Corporation Act, or without being duly qualified, or after he shall cease to be qualified, or shall have become disqualified to hold the office, he is liable to a penalty of 50*l.*, to be recovered by any burgess who shall sue for the same in any of the superior courts—such action to be commenced within three calendar months after the commission of the offence. (M. C. s. 53.)

No action can be brought unless the burgess bringing the same shall, within fourteen days after the offence, have served a notice in writing personally upon the party committing the offence, of his intention to bring such action. (M. C. s. 53.)



If a party is actually enrolled on the burgess roll for the time being, he will not be liable to the penalty for acting, on the ground that he was not entitled to be on the burgess list of the borough. (6 & 7 Will. 4, ch. 104, s. 7, see also *R. v. Phippen*, 7 A. & E. 966).

#### 11. *Exemptions from Fine.*

EXEMPTIONS.] The 51st section of the Municipal Corporations Act enacts, that no person elected shall be liable to the fine for non-acceptance of office, who shall be disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body. It also provides that every person above the age of sixty-five, or who shall have already served the same office or paid the fine for not accepting it within five years from his re-election, shall be exempt from accepting or serving the office if such exemption is claimed within five days after notice of the election; and that no military, naval, or marine officer in the service of the Crown on full pay, nor any officer or other person employed and residing within any of Her Majesty's dockyards, victualling establishments, arsenals, or barracks, shall be compelled to accept any office or duty in any borough. (M. C. Act, s. 51.)

CONSCIENTIOUS OBJECTIONS.—The 8th section of the 6 & 7 Will. 4, ch. 104, contains a proviso that no person enabled to make an affirmation instead of taking an oath shall be liable to any fine for non-acceptance of office in any borough by reason of his refusal on *conscientious grounds* to take any oath or make any declaration required by the Municipal Corporations Act, or to take upon himself the duties of such office. The Act does not prescribe any mode of notifying the objection to accept office, or of testing its sincerity. A statement or notification that the party entertains

such objection, will, it seems, be sufficient, unless in any proceedings for the recovery of the fine it can be satisfactorily proved that the party refused to accept office on other grounds.

12. *Miscellaneous Matters.*

VALIDITY OF ACTS.] All acts and proceedings of any person actually in possession of the office of mayor, alderman, councillor, auditor, or assessor, are, notwithstanding disqualification or want of qualification, as valid and effectual as if such person had been duly qualified; (M. C. Act, s. 53;) and no election is liable to be questioned by reason of any defect in the title or want of title in the presiding officer, provided he were at the time *de facto* in possession of or acting in the office giving the right to preside. (1 Vict. ch. 78, s. 1.) It is, however, provided that nothing contained in the Act shall prevent any election being set aside by reason of any fraud or any irregularity or defect other than as specified in this section. (*Id.*)

VOTES THROWN AWAY.] This may be a convenient time to consider briefly the doctrine of elections that are invalidated by the votes of the electors being thrown away; which doctrine applies equally to the election of all other officers, besides councillors.

The general rule (*a*) has been stated thus, see Arn. 141:—“If a candidate for an office is ineligible at the time of the election by reason of any disqualification, and public notice of such disqualification is given at the election, all votes given for that candidate after such notice are thrown away, and if there are other

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(*b*) This rule has been to some extent modified by *R. v. Tewkesbury*, p. 121, *post*.

eligible candidates, the one who has the largest number of votes will be duly elected. (*R. v. Hawkins*, 10 East, 210; 2 Dow. 124. See also *R. v. Boscamen*, cit. 2 Burr. 1021; *Taylor v. Bath* (Mayor), Cowp. 537; *R. v. Parry*, 14 East, 549; *R. v. Hiorns*, 7 A. & E. 960; and *R. v. Coaks*, 3 E. & B. 249.)

If, however, the disqualification of the candidate who has the largest number of votes is capable of being removed, and is, in fact, removed before the other candidate is sworn in, the title of the former becomes perfect. (*R. v. Parry*, 14 East, 549.)

If the incapacity of a candidate is not announced till after the proceedings at the election have commenced, and votes have been taken, the votes given for the unqualified candidate before such announcement are not thrown away; another candidate, therefore, whose votes upon the whole poll do not exceed in number those votes which were given for the unqualified candidate before notice of his incapacity, will not be considered as duly elected. (*R. v. Bridge*, 1 M. & S. 76.)

With regard to the notice required, Lord Mansfield is reported to have said, (see *R. v. Blissel—Rogers on Elections*, 562,) "that if the disqualification is notorious it elects the other party;" but it has been well remarked that the answer to this position appears to be that the disqualification, though notoriously existing before the poll, may have been got rid of at and even after its opening. The dictum in question, it is to be observed, is not to be found in another and probably more correct report of the same case. (Doug. 398.)

In *R. v. Hiorns*, 7 A. & E. 960, a question was raised but not decided, whether, where a party was notoriously disqualified by statute at the time of the election, the votes given for him were thrown away, as,

where an assessor was elected a councillor, being disqualified from being so elected, by the operation of the 15th section of the statute 1 Vict. ch. 78. (*R. v. Derby*, 7 A. & E. 419.)

In the more recent case of *R. v. Tewkesbury*, 18 L. T. (N. S.) 851, and 32 J. P. 580—769, the rule as to votes thrown away was very fully considered, and the decision of the court was, that the votes for a disqualified candidate will not be thrown away so as not to be taken into account, unless they are given with not only the knowledge of the fact which raises the objection, but also of the *legal consequences* of the fact, *i. e.*, the consequent disqualification.

ACCEPTANCE OF OFFICE.] The 50th section of the Municipal Corporation Act enacts, that no person elected mayor, alderman, councillor, auditor or assessor shall be capable of acting as such (except for the purpose of administering the declaration), until he shall have made and subscribed before any two or more aldermen or councillors (who are authorized and required to administer the same to each other) a declaration that he accepts the office, and that he will duly and faithfully fulfil the duties thereof, and if qualified by estate, (and not by being sufficiently rated), that he is possessed of real or personal estate, or both, to the required amount.

Every alderman who qualifies in respect of estate must once in every period of three years, if required in writing by two members of the council, renew the declaration as to such qualification.

This section also provides that nothing contained in the Act shall dispense with the obligation to make the declaration enjoined by 9 Geo. 4, ch. 17 ; but this declaration is no longer necessary. (See 29 Vict. ch. 22, s. 1.)

It was formerly the practice in many boroughs for aldermen and councillors to take the oath of allegiance on their acceptance of office, but "The Promissory Oaths Act, 1868," (31 & 32 Vict. ch. 72,) which gives the form of the oath of allegiance, and the list of officers required to take the same, does not mention aldermen or councillors. The only declaration, therefore, now required from aldermen and councillors appears to be that of acceptance of office. In the case of the mayor, (who is *ex officio* a justice of the peace,) the oath of allegiance and also the judicial oath given in the Act of 1868 seem to be proper.

The administering of the declaration is not a purely ministerial act; and if a party elected as a councillor is known to be disqualified, the aldermen or the other councillors may, and it seems, ought to refuse to administer the declaration to him; and such a disqualification would be an answer to a *mandamus* to the aldermen or councillors on their refusal to administer such declaration. (*R. v. Greene*, 6 Jur. Q. B. 777.)

Where a borough officer has administered the declaration to a person elected as councillor, he cannot afterwards be the relator in a *quo warranto* information against the party elected for exercising the office. (*Id.*)

When a party elected to the office of councillor has made the requisite declaration, the office becomes full *de facto*, and the right to such office can be questioned only by a *quo warranto*. (*R. v. Winchester*, 7 A. & E. 215.)

By the 51st section of the Municipal Corporation Act, every person elected alderman, councillor, auditor, or assessor is bound, if duly qualified for the office, to accept the same by making and subscribing the decla-

ration of acceptance of office within five days after notice of his election, or to pay a fine, to be fixed by a bye-law of the council, not exceeding 50*l.*, in the case of alderman, councillor, auditor, or assessor, and not exceeding 100*l.* in the case of a mayor.

The notice required must be a regular notice; such as that the party was actually present when his election was announced, or was apprised of the fact by some official authority.

Where, therefore, a party was elected to a corporate office during his absence from the borough, and took the declaration within five days after his return, not having received notice of the election from any official source before his return, it was held sufficient; although he had been previously made aware that he was elected, by family letters and the congratulations of friends whom he casually met. (*R. v. Preece*, 5 Q. B. 94.)

It seems that if the council neglect to make a bye-law fixing the amount of fine in such cases, they may be compelled to do so by *mandamus*. (Arn. 146.)

If the fine is not paid, any justice having jurisdiction within the borough may, upon the application of the council, issue a distress warrant to recover the same. (M. C. s. 51.)

The mode of proceeding would appear to be as follows: the council to pass a resolution directing the town-clerk to make the application. The town-clerk to apply to a justice with an authenticated copy of the resolution under the hand of the chairman; the justice to summon the offender to show cause why a distress warrant should not issue, and, if no sufficient ground be shown, the warrant to issue.

As the fine for resignation is the same as that for non-acceptance of office, it is desirable that in the case

of aldermen or councillors, it should be small, if not nominal, to meet the case of their ceasing to be qualified or able to attend to the duties of the office, either from non-residence or other cause. A large fine would not be paid. In the borough of Leicester the fine in the case of a mayor is 30*l.*, of aldermen and councillors, 1*s.*, and of auditors and assessors (offices little sought after) 50*l.*

GAOL CONTRACTS.] No councillor or other officer of a corporation can be interested, concerned, or employed, directly or indirectly, as an architect, builder, artist, mechanic, workman, merchant, trader, or otherwise, in any work done or materials supplied at any borough gaol or in any contract relating thereto; and if any one holding such office shall be so interested, &c., he will thenceforward be disqualified from continuing to hold the same, and also from being thereafter elected or appointed to fill any corporate office within the borough. (1 Vict. ch. 78, s. 39. See Rawl.)

JURIES.] A councillor is *exempt and disqualified* from serving on any jury summoned within the borough, and *exempt* from serving on any jury for the county, wherein the borough is situate; (M. C. s. 122;) and chartered exemptions are abolished; (*Id.* s. 1;) but by the 16th and 17th Vict. ch. 79, s. 6, so much of the 122nd section of the Municipal Corporation Act as exempts or disqualifies members of the council of a borough in which a separate court of quarter sessions is holden, from serving on the grand jury at the quarter sessions for such borough is repealed, as to boroughs not containing 12,000 inhabitants according to the then last census.

## CHAPTER XIII.

### *Election and Duties of Aldermen.*

TIME.] The election of aldermen is to take place on the 9th November in every third year, or if that day be a Sunday then on the following day. (M. C. ss. 25, 30.)

If the election has not taken place on the appointed day, it may take place on the day following, in the same manner as in the case of the election of councillors. (1 Vict. ch. 78, s. 25.)

The election of mayor is required, (see M. C. s. 69,) to precede that of aldermen, and a prior election of aldermen on the same day is void. (*R. v. M'Gowan*, 11 A. & E. 869.)

One half of the number of aldermen are to go out of office on the day mentioned, every third year, being those who have been aldermen for the longest time without re-election, (M. C. s. 25,) unless they have been elected to supply an extraordinary vacancy, in which case they will go out of office at the same time as the person in whose room they have been elected would have done in case no extraordinary vacancy had occurred.

Any alderman going out of office may, if qualified, be forthwith re-elected. (M. C. s. 25.)

The council, or the majority of the members present, are to elect the aldermen from the councillors, or from the persons qualified to be councillors; but



an alderman going out of office is not entitled to vote at the election of a new alderman. (M. C. s. 25.)

No person can be elected an alderman who is disqualified as a councillor; and a person to be eligible as an alderman must be possessed of the same qualification, and he is subject to the same disqualifications as a councillor. (See pp. 109, 111, *ante*, and M. C. s. 28.)

MODE OF ELECTION.] The method of electing aldermen is as follows :

At a meeting of the council, every councillor entitled to vote may vote for any number of persons not exceeding the number of aldermen to be chosen, by personally delivering at such meeting to the mayor or chairman of the meeting a voting paper containing the christian and surname of the persons for whom he votes, with their places of abode and descriptions, such papers being previously signed with the name of the member of the council voting; (1 Vict. ch. 78, s. 14;) and the chairman is openly to read the same, and to deliver them to the town-clerk to be kept amongst the records of the borough. (*Id.*)

The voting paper may be signed with the initial letter of the christian name of the voter, and the person voted for may be described by his surname, and the initial letter of his christian name. (See *R. v. Plenty*, 20 L. T. (N. S.) 521, p. 102, *ante*.)

It is not necessary that the aldermen to be elected should have an actual majority of the votes of the persons present, as it is provided by 16 & 17 Vict. ch. 79, s. 13, that the persons not exceeding the number to be chosen having the *greatest number* of votes according to the voting papers, shall be declared by the mayor to be, and shall be thereupon duly elected aldermen.

If a candidate is described in the voting paper as

of his place of business, instead of his place of abode, this is such a misdescription as will avoid his election. (*R. v. Deighton*, 5 Q. B. 896. See also *R. v. Coward*, Q. B. 14 J. P. 68.)

**EQUALITY OF VOTES.]** In the case of an equality of votes the mayor or chairman is to have a casting vote, whether or not he may be entitled to vote in the first instance. (1 Vict. ch. 78, s. 14.)

**STAMP DUTY.]** The voting papers should have a penny stamp thereon, either impressed or adhesive, to prevent any question as to their being instruments "for the purpose of voting by any person entitled to vote at any (a) meeting," within the meaning of those words in 33 & 34 Vict. ch. 97.

**OUTGOING ALDERMEN.]** Although an alderman going out of office cannot vote at the election; yet if an outgoing alderman shall have been elected mayor on the 9th November, and afterwards preside in that capacity at an election of aldermen, he is entitled to give a casting vote, though he cannot give an original vote. (*R. v. Stanley*, 11 A. & E. 869, 886.)

An outgoing alderman may vote in the election of mayor, retiring from the council before the election of aldermen, and an outgoing alderman may be elected mayor, (*R. v. Maddy*, 11 A. & E. 869, 866,) and if he be so elected mayor, he will, it seems, continue in

(a) The words (27 Vict. ch. 18) were at "any meeting of any body exercising a public trust," and were considered by the Inland Revenue Office to extend to voting papers for aldermen. The words of the present statute are therefore more comprehensive, but do not extend to voting papers for councillors, auditors, or assessors, or for members of

school boards, as they are not instruments for voting at a *meeting*, but for delivery at the polling places. Voting by means of an unstamped paper subjects to a penalty of 50*l.*, the vote tendered will be void, and no voting paper can be stamped after execution. (See 33 & 34 Vict. ch. 97, s. 102.)

office as any other mayor would do for a year, and until the succeeding mayor be appointed—thus temporarily increasing the number of the members of the council. So also if a councillor whose term of office expires on 1st November should be then mayor, he will continue to hold the office of mayor until his successor shall have been elected on 9th November, and have accepted office.

ACCEPTANCE OF OFFICE.] An alderman (whether elected from the burgesses or councillors,) is required, before he acts, to make and subscribe a similar declaration to that made by a councillor; and he is liable to the same penalty for acting without making the declaration, or without being qualified, or after he shall cease to be qualified. (See p. 117, *ante*, and M. C. ss. 50, 51, 53, and p. 121, *ante*.)

All acts, however, of a person in possession of the office are valid, notwithstanding his disqualification. (M. C. s. 53, p. 119, *ante*.)

An alderman, who shall have qualified in respect of estate, (and not by ratat,) if required to do so in writing by any two members of the council, must once in every three years make and subscribe a declaration that he is qualified to the same amount, in real or personal estate or both, as mentioned in his original declaration. (M. C. s. 50.)

EXEMPTIONS.] There are similar exemptions from the service of the office of alderman, on the payment of the fine, as in the case of a person elected to be councillor. (See p. 118, *ante*.)

BANKRUPTCY, &c.] If an alderman shall be declared bankrupt, or apply to take the benefit of any Act for the relief of insolvent debtors, (see p. 116, *ante*,) or compound with his creditors, or shall absent himself from the borough for more than six calendar months

at one and the same time, (unless in case of illness,) he shall thereby immediately become disqualified, and cease to hold the office; and in the case of absence, is also liable to the same fine as if he had refused to accept the office, but may be re-elected if then qualified. (M. C. s. 52, and p. 116, *ante*.)

VACANCY.] When an extraordinary vacancy takes place in the office of alderman, it is to be filled up in the same way by the council, within ten days after the same shall occur, on a day (*b*) to be fixed by the mayor; and if a councillor is elected to fill the vacant office of alderman, the vacant office of councillor is to be filled up in the manner before mentioned with respect to the election of councillors; and the person elected to the vacant office of alderman is to hold the office until the person in whose room he has been chosen would regularly have gone out of office. (M. C. s. 27.)

INCAPACITY OF MAYOR.] In the event of the death or absence of the mayor, or his incapacity to act, an alderman is to be chosen by the council to preside at elections, either municipal, (s. 36,) or parliamentary (s. 57).

ALDERMEN OF WARDS.] An alderman is to be chosen on the 9th day of November in every year by the councillors for the ward, who is to preside with the two assessors of the ward at the ward elections, where the borough is divided into wards; (M. C. s. 43;) and if an alderman so elected neglects to comply with the provisions of the Act in such respect, he is liable

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(*b*) The 16 & 17 Vict. ch. 79, s. 11, as to the election taking place not later than ten days after notice by two burgesses to the mayor or town clerk, applies only to the case of councillors, auditors, or assessors.

to a penalty of 100*l.*, to be recovered by action in one of the superior courts, which action must be brought within three months after the offence; one half of the penalty to be paid to the person suing, and the other to the treasurer of the borough. (M. C. s. 48.)

**ILLNESS OR INCAPACITY OF ALDERMAN.]** In case of the illness or incapacity to act of any alderman at any election, the mayor may appoint another alderman in his room during such illness or incapacity; (1 Vict. ch. 78, s. 16;) and in any borough where the number of aldermen does not exceed the number of wards the mayor may in such case appoint a councillor, not being a councillor for the ward within which the election is to take place, to preside at such election. (16 & 17 Vict. ch. 79, s. 10.)

## CHAPTER XIV.

### *Of the Election and Duties of the Mayor.*

TIME OF ELECTION.] The election of the mayor is to take place on the 9th November in every year; (M. C. s. 49;) or if that day be a Sunday, then on the following Monday. (*Id.* s. 30.)

If the election has not taken place on the appointed day, it may take place on the day following, unless it be Sunday, and then on the following Monday. (1 Vict. ch. 78, s. 25.)

The election of the mayor is to be the first business transacted at the quarterly meeting in November. (M. C. s. 69, and *R. v. M'Gowan*, 11 A. & E. 869.)

The council, or a majority of the members present, are to elect the mayor out of the aldermen or councillors of the borough. (M. C. s. 49.)

DECLARATION.] The mayor is required before he acts, to make and subscribe a similar declaration to that made by an alderman or councillor, (M. C. s. 50, p. 117, *ante*,) and he is liable to the like penalty of 50*l.* for acting without making the declaration, or without being qualified, or after he shall cease to be qualified. (M. C. s. 53.)

All acts, however, of a person in possession of the office are valid, notwithstanding his disqualification. (See p. 119, *ante*.)

If a *councillor* is elected mayor, and does not accept the office, by making the requisite declaration within five days after notice of his election, he is liable to a

fine not exceeding 100*l.*, to be fixed by a bye-law made by the council. (M. C. s. 51.)

There are similar exemptions from the service of the office, or the payment of the fine, as in the case of a person elected to the office of councillor (p. 118, *ante*).

The Act does not authorise the imposition of any fine upon an *alderman* who has been elected mayor, and who declines to accept the office; but it seems that a *mandamus* would lie in such a case to compel him to serve the office (*a*); or he may be proceeded against by indictment (*b*), or criminal information (*c*).

OATHS AS JUSTICE.] "The Promissory Oaths Act, 1868," substituted the oath of allegiance and judicial oath, in the form there prescribed, for the oaths theretofore required for justices, and "The Promissory Oaths Act, 1871," provides, that such oaths shall be taken before such persons as Her Majesty may appoint, or before the Lord Chancellor, or in the court of Chancery, Queen's Bench, Common Pleas, or Exchequer in open court, or in open court at the General or Quarter Sessions of the Peace for the county, borough, or place in which the person taking the oaths acts as justice. In exercise of the power thus given, Her Majesty has appointed that such oaths may be taken by any mayor before two justices of the borough; or, if there be no justices, before any two councillors of the borough. The Act of 1871 must be considered as repealing sect. 104 of 5 & 6 Will. 4 ch. 76, and sect. 3 of 6 & 7 Will. 4, ch. 105, as to the parties before whom the oaths can be taken.

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(*a*) *E. v. Bower*, 1 B. & C. 585; and *E. v. Leyland*, 3 M. & S. 186.      (*c*) *E. v. Whitwell*, 5 T. R. 86. (See Arn. 159, and 33 J. P. Treat. 546.)

(*b*) *Vanacher's case*, 1d. Raym. 499; Carth. 400.

**REMOVAL OF DISQUALIFICATION.]** The mayor of a borough, not divided into wards, is "incapable of acting" as returning officer at an election for councillors if he is one of the candidates; but it will be competent for the council to elect an alderman to act in his place, and if this be done, he will not be disqualified; the fact of his being a candidate renders him "incapable of acting" within the meaning of the 36th section of the Municipal Corporation Act. (*R. v. White*, 16 L. T. (N. S.) 828, and 31 J. P. 595.) As to votes for a disqualified candidate being thrown away, see *R. v. Terchesbury*, 18 L. T. (N. S.) 851, and p. 121, *ante*.

**DURATION OF OFFICE.]** The mayor is to continue in office for one whole year, (M. C. s. 49,) and until his successor shall have accepted the office and have subscribed the requisite declaration, (6 & 7 Will. 4, ch. 105, s. 4,) and he may be re-elected at the expiration of his office. (3 & 4 Vict. ch. 47.)

If the mayor shall be declared bankrupt, or shall apply to take the benefit of any Act for the relief of Insolvent Debtors, or shall compound with his creditors, (see p. 116, *ante*,) or be absent himself from the borough for more than two calendar months at one and the same time together, unless in case of illness, he will be disqualified and cease to hold the office; and, in the case of absence, is also liable to the same fine as if he had refused to accept the office; but he may be re-elected. (M. C. s. 52.) The council is forthwith to declare the office to be void, and signify the same by notice in writing under the hands of three or more of them, countersigned by the town-clerk, and affixed in some public place within the borough. (*Id.*)

In the case of a vacancy arising in the office of mayor, by reason of the person elected not accept-



ing the office, or by his death or his ceasing to hold the office, the council, within ten days after such vacancy, shall elect another fit person to be mayor for the remainder of the current year; (M. C. s. 49;) and the notice for the meeting of the council to supply a vacancy by reason of the death, resignation, or lawful removal of the mayor, is to be signed by the town-clerk. (16 & 17 Vict. ch. 79, s. 9.)

JUSTICE.] The mayor is *ex officio* a justice of the peace for the borough during his year of office, and the next succeeding year after he shall cease to be mayor, unless disqualified by any of the disqualifications mentioned in the Act. (M. C. s. 57.)

PRECEDENCE.] The mayor has during his mayoralty precedence in all places within the borough; (M. C. s. 57;) and precedence over all justices acting for the borough, and is entitled to take the chair at all meetings of justices held within the borough; but the mayor is not by virtue of this provision to have precedence over justices for the county in which the borough is situate, unless when acting in relation to the business of the borough, or over any stipendiary magistrate engaged in administering justice; nor is the mayor of Cambridge or Oxford to have precedence over the vice-chancellors of those universities. (24 & 25 Vict. ch. 75, s. 2.)

RETURNING OFFICER.] In boroughs which return a member or members of parliament, except in Berwick-upon-Tweed, and in cities and towns which are counties of themselves, the mayor is returning officer at parliamentary elections, and if there shall be more than one mayor within the boundaries of any borough, the mayor of the borough to which the writ

of election is directed is to be the returning officer. (M. C. s. 57.)

If at the time of such election the mayor is dead, absent, or otherwise incapable of acting, or in case there shall be no mayor, the council shall forthwith elect one of the aldermen to act as returning officer. (M. C. s. 57.)

SALARY.] The council may fix such salary or allowance to be paid to the mayor as they shall think reasonable. (M. C. s. 58) (*d*).

DEPUTY MAYOR.] The mayor may from time to time appoint an alderman or councillor to act as the deputy mayor during the illness or absence of the mayor, every such appointment to be signified in writing to the council, and to be recorded in the minutes of their proceedings. (16 & 17 Vict. ch. 79, s. 7.)

The deputy so appointed may, during the illness or absence of the mayor, lawfully do and perform all acts which the mayor in his official capacity might himself do and perform; but no such deputy, not being a justice of the peace, shall act as a justice or in any judicial capacity, nor preside at any meeting of the council, unless specially appointed by the meeting so to do. (*Id.* s. 8.)

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(*d*) In many boroughs no salary whatever is paid to the mayor, in others the salary is applied for the purpose of meeting certain items of expense, (as charitable subscriptions, &c.), which could not be legally paid out of the borough fund,

and in others the salary is granted for the purpose of meeting, to some extent, the claims upon the mayor, in supporting the dignity of his office, and in maintaining the hospitality of the mayoralty.

## 136 *Of the Election and Duties of the Mayor.*

It will be observed that the deputy mayor can only act during the "*illness or absence*" of the mayor, and not, as in the case of a deputy assessor, during the "*illness or incapacity to act*" of the assessor. If the mayor be dead, absent, or otherwise incapable of acting at municipal elections, (M. C. s. 36,) or at parliamentary elections, (*Id.* s. 57,) the council are forthwith to elect one of the aldermen to execute the powers and duties of the mayor. Whether the deputy may act in the case of the "absence" of the mayor at municipal or parliamentary elections without any appointment by the council has not been determined, but, to obviate any doubt, it will be desirable for the council to comply with the requirements of the 36th or 57th section of the Municipal Corporation Act by appointing an alderman to officiate on these occasions.

CASTING VOTE.] The mayor is entitled to preside at all the meetings of the council, and as chairman, will have a second or casting vote in all cases of equality of votes; (M. C. s. 69;) and if he is present at any meeting for the election of aldermen, he is to act as chairman, and in case of an equality of votes he is to have the casting vote, whether or not he may be entitled to vote in the first instance. (1 Vict. ch. 78, s. 14.)

An election over which the mayor presides is not to be questioned for any defect in his title, if he were then in actual possession of the office. (1 Vict. ch. 78, s. 1.)

VACANT ASSESSORSHIP.] If an extraordinary vacancy shall happen in the office of assessor, and at the same time a vacancy shall exist or arise in the office of councillor which cannot be legally filled up before the vacant office of assessor has

been or can be by law filled up, the election to supply such vacant office of councillor shall be held before the alderman of the ward, the continuing assessor, and such burgess (not being a burgess representing or enrolled on the burgess list for that ward) as the mayor shall by writing under his hand appoint. (32 & 33 Vict. ch. 55, s. 8.)

QUO WARRANTO.] A mayor who is disqualified from being elected cannot, by his subsequent resignation, disentitle the relator to a rule absolute for a *quo warranto*. (*R. v. Blizzard*, 31 J. P. 200.)

## CHAPTER XV.

### *Of the Powers of the Council.*

OFFICERS.] The Council have power to elect the aldermen, (M. C. s. 25, and 1 Vict. ch. 78, s. 14,) and the mayor, and in certain cities, and counties of cities, and towns, the sheriff. (M. C. s. 61.)

They have also power to appoint the town-clerk, treasurer, and other corporate officers, (M. C. s. 58,) and to make orders on their officers to account from time to time. (*Id.* s. 60.)

COMMITTEES.] They may appoint, out of their own body, from time to time, either general or special committees, for any purposes which they may consider would be better regulated and managed by means of such committees; the acts of every committee to be submitted to the council for their approval; (M. C. s. 70;) and they are expressly directed to appoint a watch committee, of which the mayor is, *ex officio*, a member. (M. C. s. 76.)

CHARITABLE TRUSTS.] The council are to act as trustees (except in cases of charitable trusts,) where the former corporation were *ex officio* the sole trustees; (M. C. s. 72;) but in cases of charitable trusts, that is, in all cases where property has been granted to a corporation or any members thereof, subject to a payment for charitable purposes, imposed by the grantor, (see *R. v. Sankey*, 5 A. & E. 423,) the estate, interest, and powers remained in the persons in whom at the time of the passing of the Municipal Cor-

porations Act, the same were vested until the 1st of August, 1836, when the Lord Chancellor was to make orders for the administration of such trust estates; and in virtue of which provisions trustees have been appointed in all corporate boroughs to administer the charity funds formerly vested in and administered by the old corporate body. (M. C. s. 71.)

OTHER TRUSTS.] In cases where the corporate body, or any number or description of the members thereof, were formerly trustees jointly with other trustees for the execution of any Act of Parliament, or of any trust, the Council are to appoint the like number of members of the Council to act jointly with the other trustees, such appointment to be made on the 1st of January in every year, unless some other day be fixed in the Act, deed, or will creating the trust; and in case of an extraordinary vacancy forthwith to appoint another member of the Council to supply the same. (M. C. s. 78.)

Tolls granted by charter to a Corporation for the repair of the roads and bridges within the borough are gifts for charitable purposes; (*Attorney-General v. Shrewsbury*, 6 Beav. 220;) but property appropriated by a Corporation to the maintenance of lecturers to preach before the Corporation is not a charitable trust. (*Oxford Charities*, 3 Mylne & C. 239.)

Where under any local Acts powers were formerly exercised by justices in quarter sessions, not relating to the business of a court of criminal or civil judicature, (see *Palmer v. Powell*, 6 M. & W. 627,) or by any particular class, &c. of the body corporate, such powers are now vested in the Council, and are to be executed by the Council at a quarterly meeting, or by a committee of the Council, or any three or more of such committee appointed at a quarterly meeting. (6 & 7. Will. 4, ch. 105, s. 8.)

In most boroughs there were trustees appointed by local Acts, for paving, lighting, cleansing, watching, supplying with water, or otherwise regulating the borough, and such trustees were authorized by the Municipal Corporation Act, s. 75, to transfer their powers to the Council. This power has now been exercised in almost every borough, so as to prevent any conflict of authority.

**BOROUGH FUND.]** If, after payment of the salaries of the corporate officers, the expenses incident to elections, the maintenance of the gaol, house of correction, and corporate buildings, the payment of constables, and of all other expenses not otherwise provided for, which shall be necessarily incurred in carrying into effect the provisions of the Municipal Corporation Act, (see Chap. "Borough Fund," *post*.) and such expenses as have by virtue of various subsequent Acts, either general or local, been charged upon the borough fund, there shall be a surplus, then such surplus is to be applied, under the direction of the Council, for the public benefit of the inhabitants and the improvement of the borough. (M. C. s. 92.)

But if the borough fund shall not be sufficient for the purposes aforesaid, the Council are required from time to time to make an estimate of the additional amount required, and to raise the same by a borough rate. (*Id.* See "Borough Fund," *post*.)

Under the general power they are not entitled to pay the expenses of legal proceedings, when they relate to the rights or misconduct of individual members of the corporation; but they may do so, in defending general corporate rights. (See p. 42, *ante*.)

The following have been held to be cases in which the Corporation were not justified in paying the expenses out of the surplus borough fund:—Costs of

opposing a rule for a *quo warranto* against a party duly elected as councillor; (*R. v. Bridgwater*, 10 A. & E. 281;) or for a criminal information against an alderman for alleged misconduct; (*R. v. Paramore*, Id. 286;) costs of resisting a *mandamus* directed to the corporation for the purpose of trying which of two councillors was legally elected; (*R. v. Leeds*, 4 Q. B. 790;) of defending an indictment against borough constables for alleged misconduct, (*R. v. Thomson*, 5 Q. B. 477), although an order for the payment of such expenses might probably have been made by the watch committee, with the approbation of the council, under M. C. s. 8; (see *Rawl.* 170;) and of presenting a petition to chancery with respect to the appointment of charity trustees. (*R. v. Warwick*, 15 L. J. Q. B. 306.)

In the following cases, it was held that the expenses might be paid out of the surplus fund:—Costs of prosecuting parties for a riot and assault upon the presiding officer engaged in the revision of the burgess lists; (*R. v. Lichfield*, 4 Q. B. 893;) of resisting, though ineffectually, a *mandamus* to assess compensation to an officer dismissed by the town-council for alleged misconduct; (*R. v. Lichfield*, 10 Q. B. 534;) and of opposing a rule for a *mandamus* to the mayor and assessors to hold a fresh court of revision, it appearing that the litigation was proper. (*R. v. Rochester*, 30 L. J. C. P. 169.)

In the following cases it was held that the expenses could not be paid out of the borough fund, where there was no surplus:—The expenses of a Bill before parliament for authorizing improvements in the Borough; (*Attorney-General v. Norwich*, 12 Jur. 424;) and expenses incurred in opposing before justices the rules of a water company, and in opposing in parliament a bill of the same company, which was



consequently withdrawn, and orders for their payments were quashed. (*Roberts v. Corporation of Sheffield*, 24 L. T. (N. S.) 659.) [See also pp. 42, 172, 201.]

MEETINGS OF COUNCIL.] The council are required to hold quarterly meetings, for the transaction of general business, no notice being required of the general business to be transacted on those days; and such quarterly meetings shall be held, at noon, on 9th November, or if that day shall fall on a Sunday, on the day following, and at such hour on such other three days before the 1st November then next following, as the Council at the quarterly meeting in November shall decide. (M. C. s. 69.) The first business at the quarterly meeting in November is to be the election of mayor. (*Id.*)

Meetings of the Council may be adjourned by the majority of the members of the Council who shall be present. (M. C. s. 69.)

The mayor has power to call a special meeting at any time, by causing a notice, signed by himself, to be fixed on the town-hall, three clear days before the intended meeting, stating the time and place thereof.

It does not seem that the business to be transacted is required to be stated in the notice, (*Arn.* 171,) but it is usual to do so; but a summons to attend the council, signed by the town-clerk, must be left at the usual place of abode of every member of the council, or at the premises in respect of which he is enrolled a burgess, three clear days at least before the meeting, and the summons must specify the business proposed to be transacted at the meeting. (M. C. s. 69.)

If the meeting is an *adjourned quarterly* meeting, it is necessary that any business proposed to be transacted, which was not actually entered upon at the general quarterly meeting, should be specified, but not otherwise. (*R. v. Grimshaw*, 10 Q. B. 747.)

If upon receiving a requisition, signed by five members of the council, the mayor refuses to call a meeting, the same five members may do so upon giving a notice signed by themselves, instead of by the mayor; and in that case the *notice* must state the business proposed to be transacted. Summonses signed by the town-clerk must also be given as in the case of a meeting called by the mayor. (M. C. s. 69.)

To constitute a valid meeting there must be present not less than one-third part of the number of the whole council, and the mayor, if present, is to preside; and in his absence the council are to choose a chairman from the aldermen present, or if there be no alderman present, then one of the council. (M. C. s. 69.)

All questions brought before the meeting, including those of adjournment, and all acts done by the council, are to be decided and done by the majority (a) of the members present. (M. C. s. 69, p. 144, *post*.)

The chairman of the meeting has a single vote, as a member; and in case of an equality of votes, he has a second or casting vote. (M. C. s. 69.)

Minutes of the proceedings should be drawn up and fairly entered into a book to be kept for that purpose, and be signed by the chairman of the meeting. (See *R. v. Evesham*, 8 A. & E. 266. See also *Miles v. Bough*, 3 Q. B. 845; and *Southampton Dock Company v. Richards*, 1 M. & G. 448.)

These minutes are to be open to the inspection of any burgess, at all reasonable times, upon the payment of one shilling, (1 Vict. ch. 78, s. 22,) and he is also at liberty to copy or make extracts from the minute book, and of any order for payment of money; and

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(a) As to the meaning of the *post*, where its effect is considered "majority," see p. 144, *sic*.

any alderman or councillor may at all seasonable times make any copy of or take any extract from the book required to be kept by the treasurer of the borough. (1 Vict. ch. 78, s. 22.)

MAJORITY OF COUNCIL.] All acts of the council are by the 69th section of the Municipal Corporations Act required to be done and decided by the majority of the members of the council who shall be present at the meeting, the chairman having a casting vote. It will be useful to consider what will constitute "a majority" within the meaning of these words, and with this view to refer to certain decisions of the superior courts.

In *Oldknow v. Wainwright*, 2 Burr. 1017, a meeting was called for the election of a town-clerk. Twenty-one electors were present, of whom nine voted for the person proposed, eleven protested against him without voting for any other person, and it was held by Lord Mansfield that the election was good, on the ground that where electors do nothing but merely dissent, they lose their votes.

In *Goosling v. Veley*, 16 L. J. (N. S.) 201, a meeting of ratepayers had been assembled to lay a church rate under a *monition* from the Ecclesiastical Court, and it was held by the court of Queen's Bench that a majority of those who chose to take part in the proceedings was sufficient in a meeting convened for doing some act necessary to be done at that meeting (as under the *monition*), the court considering that the law must not be set at nought, and its requirements disregarded; and that those who stand aloof must be considered as refusing to assist in the exercise of their duty, and leaving it to be done by the minority, which is desirous of doing what is right.

In the more recent case of *Re Eynsham Parish*, 18 L. J. (N. S.) 210, it was held by the court of Queen's

Bench that when a statute (as the Lighting and Watching Act of 3 & 4 Will. 4, ch. 90, s. 7,) requires a majority consisting of a certain proportion (in that case of two-thirds) of the votes of the persons present to render an Act valid, there must be the specified proportion of those present *actually voting* for the resolution, and that those who refuse to take any part in the proceedings cannot be considered as absent although they do not vote or propose any amendment; Patteson, J., observing, that in *Gosling v. Veley*, there was no specific number of those present required by statute to validate the act done—so that that case did not apply.

In the still more recent case of *R. v. Christchurch*, 26 L. J. (M. C.) 68, affirmed in error, 27 L. J. (M. C.) 23, it was held that where a local Act empowered a vestry, “or the major part of them,” to remove a poor rate collector, the majority competent to remove must be the *actual majority* of the vestrymen assembled, and that it was not sufficient at a meeting of thirty-five vestrymen, for sixteen to vote for the removal, and eleven against it, the remaining eight not voting at all. In this case it was observed by Erle, J., that “a majority must mean a majority of those who vote for or against.”

Having regard to the requirements of the Municipal Corporations Act, that all acts of the council shall be done and decided by a majority of the persons present, and to the judgment of the superior courts in the two last cases, we think it may be safely laid down as a general rule that an actual majority of the persons present must concur in any resolution to render it valid as an act of the council, and that a mere majority of the votes given where several abstain from voting, unless it amount to an actual majority of the persons present, will be insufficient.

On this point the opinion of Mr. Mellish, Q. C., was taken in 1866, by the Municipal Law Officers' Society, (see 32 *J. P.* 429,) and he advised that the vote of every member of the council present, when any question is put, who does not vote in the affirmative must be counted in the negative, and that when a member does not wish to vote on either side, he should go out of the room.

To this general rule there is, however, an exception in the case of the election of aldermen, it being expressly provided by the 16 & 17 Vict. ch. 79, s. 13, that the persons having "*the greatest number of votes*" shall be duly elected; and a further exception may perhaps exist in those cases where the council is assembled to discharge a statutory duty required to be done at a particular meeting, as the election of mayor, or to do some Act in obedience to a peremptory writ of *mandamus*. In these instances, which we give by way of illustration, if the members of the council are guilty of *contumacious opposition*, either by not voting for any person as mayor, or by voting for a disqualified candidate, with full knowledge of the act which disqualifies and of its legal consequences as a disqualification, (see *R. v. Terresbury*, 18 L. T. (N. S.) 851,) or by refusing to take part in the act required to be done under the *mandamus*, the persons so acting would, we think, be taken (to use the words of Lord Denman, in *Gosling v. Veley*,) voluntarily to abstain from exercising their franchise, and would not be permitted to employ their franchise merely to prevent an election, or to expose the council as a body to the consequences of wilful disobedience to the mandate of a superior court.

SHERIFF.] In the cities of Oxford, Berwick-upon-Tweed, and cities and towns that are counties of themselves, the council are required to appoint a sheriff,

(M. C. s. 61,) which appointment is to take place on the 9th of November in each year, immediately after the election of the mayor, (6 & 7 Will. 4, ch. 105, s. 5). The sheriff has the like powers and duties as the sheriff, or the person filling the office of sheriff in these places would have had if the Municipal Corporation Act had not passed.

The office of sheriff is not an "office of profit" within the 28th section of the Municipal Corporations Act. (5 & 6 Vict. ch. 104, s. 8.)

CORONER.] Where a borough has a separate court of quarter sessions, the council are to appoint a coroner, who is not to be an alderman or councillor. Such office is to be held during good behaviour; and in case of a vacancy is to be filled up within ten days afterwards. (M. C. s. 62.)

Upon the petition of a council of a borough, the Crown may grant a court of quarter sessions in such borough; (M. C. s. 103;) and in such case the council are to appoint a coroner within ten days after such grant. (M. C. s. 62, see *R. v. Grimshaw*, 10 Q.B. 747.)

INSPECTOR OF WEIGHTS.] In all municipal boroughs under 5 & 6 Will. 4, ch. 76, for which a separate court of quarter sessions has been granted, (and by 24 & 25 Vict. ch. 75, s. 6, in all boroughs having a separate commission of the peace, although they may not have a separate court of quarter sessions,) the town councils (a) have the same powers and authorities concerning weights and measures and the appointment of inspectors and examiners as are under 5 & 6 Will. 4, ch. 63, vested in justices in quarter sessions in counties; and inspectors so appointed by town councils and duly

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(a) The 16 & 17 Vict. ch. 79, exempts boroughs appointing inspectors from liability to con-

tribute to the county rate in respect of weights and measures.

authorized by warrant in writing, under the hand of the mayor for the time being, and under the corporate common seal, have and may exercise the same or the like powers of entering shops, stores, warehouses, &c. within the borough, and of examining, comparing, and trying, as inspectors in counties. (22 & 23 Vict. ch. 56, s. 4.)

The salary will be payable out of the borough fund, and standard weights and measures should be provided.

It is desirable for councils to require periodical returns to be made by inspectors of the number of weights and measures examined—of the fees received—of the number of shops and other places visited, and of the number of prosecutions and convictions for unjust weights or measures.

RATES.] The council have power to levy borough rates if the borough fund shall be insufficient, as mentioned more fully in the chapter relating to "The Borough Fund;" (M. C. s. 92,) and also watch rates not exceeding eightpence in the pound in the year. (22 & 23 Vict. ch. 32, s. 6, amending 2 & 3 Vict. ch. 28, s. 1, and 3 & 4 Vict. ch. 28, s. 2.)

Under 1 Vict. ch. 81, councils may order the overseers or other persons making the poor rate to pay the amount of any borough or watch rate for which their parish or place shall be liable out of the poor rate made and collected for such parish or place, or may order such overseers or other persons to make a pound rate upon all rateable property for such amount. If the overseers or other persons refuse or neglect to comply with such order, the amount of the rate directed to be paid by them may be levied by distress of the goods of them or any of them under a warrant from the mayor or two justices for the borough. (*Jones v. Johnson*, 5 Exch. 862.)

If separate rates be made by the overseers, as may be necessary in certain cases where parts of a parish

are not within the borough, the provisions of 8 & 9 Vict. ch. 110, and 12 & 13 Vict. ch. 65, should be observed.

**LIGHTING.]** Certain powers as to lighting boroughs, and for enabling councils to assume the powers of inspectors under the Parochial Act of 3 & 4 Will. 4, ch. 90, were conferred on councils by the Municipal Corporation Act, ss. 87, 88, but it is unnecessary to set out the provisions of the statute, as the duty of lighting in all corporate boroughs in which the council are the local board of health is now exercised by the local board, and the expenses paid out of the general district rate.

**PETTY SESSIONS HOUSES AND LOCK-UPS.]** The council of every borough, having a separate commission of the peace, may provide and furnish one or more suitable police offices for the purpose of transacting the business of the justices, and pay from time to time out of the borough fund such sums as may be necessary for providing, upholding, and furnishing, and for the necessary expenses of such offices, it being expressly provided that no room in any licensed victualling-house or alehouse shall be used as a police office. (M. C. s. 100.)

The powers of the council have been extended by "The Petty Sessions and Lock-up Houses Act, 1868."

Under that Act two or more local authorities may, with the approval of a secretary of state, contract that a place for holding petty sessions shall be provided at their joint expense in such proportions as they may agree. (31 & 32 Vict. ch. 22, ss. 3, 4, 10. See also 12 & 13 Vict. ch. 18, s. 2.) Any neighbouring local authority may contract with another local authority for the use of a building for such purposes. (*Id.* ss. 5, 10.)



Any local authority (*i. e.*, the council, in boroughs having a commission of the peace, s. 3,) may with the like approval, contract with any neighbouring local authority for the use of their lock-up house. (31 & 32 Vict. ss. 6, 7, 10.)

Any petty sessions houses and lock-ups, the subject of any contract under this Act, are to be deemed to be within the jurisdiction of each of the contracting local authorities; (*Id.* s. 8); and the expense payable by one authority to the other in pursuance of any contract may be paid out of the borough fund. (*Id.* s. 9.)

Any local authority may delegate to a committee consisting of two or more members any of the powers of the Act; every question to be determined by the majority of members *present and voting on that question*; and the chairman to have a casting vote. (*Id.* s. 11.)

All powers given by this Act to be in addition to any other powers conferred by any other Act of Parliament. (*Id.* s. 12.)

PUBLIC HOUSE CLOSING ACTS.] The council have power to adopt "The Public House Closing Act, 1864," as amended by "The Public House Closing Act, 1865," at a meeting duly convened. The provisions of these statutes will be found in a subsequent chapter.

PRISONS.] Councils are also entrusted with certain powers with respect to the erection and maintenance of gaols, and the appointment of some of the officers, other powers being delegated to the magistrates of the jurisdiction. We refer to a subsequent chapter on "The Borough Gaols" for a brief exposition of the relative duties of town councils and justices.

LUNATIC ASYLUMS.] The obligation of providing

an adequate asylum for pauper lunatics is imposed on municipal boroughs, and unless councils have assumed the powers of the Lunatic Acts in the mode prescribed by "The Lunatic Asylums Act, 1853," the powers are to be exercised by the justices. We have given an outline of these powers in a subsequent chapter on Lunatic Asylums.

**FREE PUBLIC LIBRARIES.]** Town councils are authorized to establish free libraries and museums—to borrow money for the purpose of raising funds for erecting or purchasing the requisite buildings—and to apply any sum not exceeding the amount of a penny rate per annum out of the borough fund in the maintenance of these institutions. We have given the provisions of the several Acts now in force in a subsequent chapter.

**OTHER POWERS.]** The powers of town councils to alienate their property—to apply the borough fund—to grant superannuation allowances to police constables—to protect corporate rights—and to carry into execution the various provisions of the Municipal Corporation Act, and the several Acts amending the same, will be found under their appropriate titles in different parts of this work.

## CHAPTER XVI.

### *Of the Election and Duties of Auditors.*

**ELECTIVE AUDITORS.]** On the 1st of March in each year, unless that day be Sunday, and then on the following day, the burgesses are to elect, by a majority of votes, two persons as auditors of the borough, who are to continue in office for one year; and they are to be elected from the persons qualified to be councillors. (M. C. s. 37.)

But no burgess is eligible as auditor who is a member of the council, or town-clerk, or treasurer. (M. C. s. 37.) And no burgess is eligible to be elected a member of the council while holding the office of assessor, or elective auditor. (1 Vict. ch. 78, s. 15.)

No burgess can vote for more than one person to be auditor. (M. C. s. 37.)

There is no provision as to the eligibility of auditors for re-election; they are, however, constantly re-elected without any objection having been yet made.

In case of an extraordinary vacancy arising in the office of auditor, the mayor is to fix a day not later than ten days after notice of the vacancy shall have been given to the mayor or town-clerk by any two burgesses, (see 16 & 17 Vict. ch. 79, s. 11,) for proceeding to a new election, which is to be conducted in the same way as the original election. (M. C. s. 47.)

Each auditor is required, before he acts, to make a declaration of the acceptance of office similar to that required of a councillor. (M. C. s. 50.)

If a person elected auditor does not accept the office, he is liable to such fine not exceeding 50*l.*, as shall have been fixed by a bye-law, to be recovered as in the case of a councillor. (M. C. s. 51.)

The exemptions from serving are the same as in the case of a councillor. (M. C. s. 51, and p. 118, *ante*.)

If any person acts as auditor without making the requisite declaration, or without being duly qualified, he is liable to a penalty of 50*l*. (M. C. s. 53.)

NOMINATION SYSTEM.] By the Statute of 32 & 33 Viet. ch. 55, s. 6 (p. 266), it is provided that at any election of auditors or assessors, any person entitled to vote may nominate for the office of auditor or assessor *in like manner* as he could nominate for the office of councillor under 22 Viet. ch. 35 (p. 93, *ante*), and that the proceedings in relation to such nomination and election shall be in all respects as are prescribed in the last-mentioned Act in relation to the election of councillors. A question has been raised under this section whether a burgess can *nominate* more than one person to be auditor or assessor. As the restriction on the power of *voting* for one person only contained in section 37 of the Municipal Corporations Act is not referred to, it must, we think, be considered as still in force, and not repealed by implication. If this be the case, it cannot have been intended by the Legislature to give to a burgess the power of *nominating* two persons, when he can *vote* for one person only, especially as the nomination would, in the event of the required number of auditors or assessors only being proposed, practically amount to voting. The manifest object of the new statute was merely to apply the *principle* of nomination to the election of auditors and assessors, and to provide for the mode of conducting such election consequent on the adoption of that principle; and there is no indication of any intention to repeal the restrictive provision contained in the Municipal Corporations Act, introduced with a view to secure the representation of two parties in the election of auditors and assessors.

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**MAYOR'S AUDITOR.]** Besides the two auditors of the borough, who are generally termed *elective auditors*, the mayor, on the 1st of March in every year, or in case of any extraordinary vacancy, within ten days after such vacancy, is to name a member of the council to act as co-auditor with the elective auditors. (M.C. s. 93.)

**DUTIES.]** The duties of the auditors are to examine and audit all the accounts of the treasurer of the borough, with all vouchers and papers relating thereto, which are to be laid before them by the treasurer, twice a year, in the months of March and September, and if the accounts are found to be correct, the auditors are to sign the same. (M. C. s. 93.)

After the accounts have been so examined and audited in the month of September in every year, the treasurer is to make out and cause to be printed a full abstract of his accounts for the year, and a copy is to be open to the inspection of all the ratepayers, and copies to be delivered to any ratepayer applying for the same, on payment of a reasonable price for each copy. (M. C. s. 93.)

A statement of all monies received and expended is to be transmitted to the Secretary of State before the 1st of March in each year, (6 & 7 Will. 4, ch. 104, s. 10,) made up to the last period of audit. (1 Vict. ch. 78, s. 43.)

**REMUNERATION.]** Auditors are not entitled to any payment or allowance for their services under the Municipal Corporation Act, but as auditors of the accounts of the Local Board of Health, where the mayor, aldermen, and burgesses are the Local Board, they will be entitled under "The Local Government Act, 1858," s. 60, to such reasonable allowance, not being less than two guineas for every day in which they are employed in the audit of such accounts, as the Local Board may from time to time appoint.

## CHAPTER XVII.

### *Of the Election and Duties of Assessors.*

**ELECTION OF ASSESSORS.]** In boroughs that are not divided into wards, two assessors are to be chosen at the same time, for the same period, in the same manner, and under the same conditions as to qualification, as the auditors. (M. C. s. 37.)

Where a borough is divided into wards, the burgesses, on the 1st of March in any year, unless that day be Sunday, and then on the following day, are to elect two assessors for each ward, under the same conditions as in the case of assessors for the borough. (M. C. s. 43.)

**REVISING ASSESSORS.]** On the first day of March, unless that day be Sunday, and then on the following day, in every borough divided into wards, two assessors are to be chosen to hold the court for revising the burgess lists with the mayor, in like manner as provided by the Municipal Act concerning the election of two auditors of such borough (1 Vict. ch. 78, s. 4.)

**MODE OF ELECTION.]** The mode of election of revising assessors, and ward assessors, will be the same as in the election of councillors (M. C. s. 32, as amended by 22 Vict. ch. 35, and 32 & 33 Vict. ch. 55, ss. 6, 7, and p. 93, *ante*); but no burgess can vote for (or nominate more than one person to be assessor. M. C. s. 37.)

**VACANCY.]** In case of a vacancy occurring, the mayor, or where the borough is divided into wards

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the alderman of the ward where the vacancy occurs, is to fix a day for a new election, in the same manner as in the case of a councillor or auditor, and the election of an assessor of a ward, is to be held before the alderman of the ward, and the continuing assessor, and such burgess (not being a burgess representing or enrolled on the burgess list for that ward) as the mayor shall by writing under his hand appoint. (M. C. s. 47, and 16 & 17 Vict. ch. 79, s. 12.)

It is also enacted by 32 & 33 Vict. ch. 55, s. 8, that if an extraordinary vacancy shall happen in the office of assessor, and at the same time a vacancy in the office of councillor, the election to supply the vacant office of councillor shall be held before the alderman of the ward, or the mayor,—where the borough is not divided into wards, the continuing assessor, and such burgess (not being a burgess for the ward) as the mayor shall by writing under his hand appoint.

ACCEPTANCE OF OFFICE.] The provisions as to an assessor accepting office by making a declaration or paying a fine; as to the exemptions from serving, and as to the penalty for acting without being qualified, are also the same as in the case of a councillor or auditor. (See p. 121, *ante*.)

The question as to the re-election of an assessor is also left undetermined as in the case of an auditor. (See p. 153, *ante*.)

One objection to the re-eligibility of assessors is, that their election is before the mayor and themselves, in a borough not divided into wards, and before the alderman and the two assessors themselves, in a borough divided into wards. They may therefore be considered as returning officers, and incapable of returning themselves, as in the case of a mayor who is disqualified from being elected a councillor of the ward for which

he is returning officer. (See *R. v. Owens*, 28 L. J. (Q. B.) 316, and Rawl. p. 70.)

If, however, the assessor is disqualified from acting as returning officer by reason of his candidature, the deputy may, it seems, officiate, and thereby remove the disqualification. (See *R. v. White*, 31 J. P. 598, and 16 L. T. (N. S.) 828, p. 132, *ante*.)

DEPUTY.] Every assessor is, as soon as convenient after his election, to appoint a deputy under his hand to act for him in case of his illness or incapacity to act at any election or revision of the burgess lists, and every such appointment shall be signified by writing under his hand to the council, and be recorded on the minutes of their proceedings. (1 Vict. ch. 78, s. 17.)

DUTIES.] The duties of the assessors are to assist the mayor, or in boroughs divided into wards, the alderman, in revising the burgess lists; (M. C. s. 18;) and in presiding at the borough or ward elections of councillors. (M. C. ss. 32, 43.)

All acts done by an assessor, acting as such, will be valid, notwithstanding he may have been disqualified at the time; (M. C. s. 53;) and no burgess roll is to be questioned for want of title in an assessor. (1 Vict. ch. 78, s. 5.)

An assessor cannot be a member of the council. (1 Vict. ch. 78, s. 15.)



## CHAPTER XVIII.

### *Of the Resignation of a Corporate Office.*

**POWER TO RESIGN.]** The Municipal Corporation Act made no provision with regard to any person who having been elected to a corporate office and having accepted the same and entered upon the duties, should afterwards wish to resign; but it was enacted by 6 & 7 Will. 4, ch. 104, s. 8, that every person elected into a corporate office may at any time resign his office on payment of the fine to which he would have been liable for non-acceptance of such office.

It seems that if the council have omitted to pass a bye-law fixing the fine for non-acceptance of the office, the party who has accepted it may make a valid resignation thereof, without payment of any fine, and they may accept it. (*Stamland v. Hopkins*, 9 M. & W. 178, and Arn. 182.)

**HOW MADE.]** As no mode of effecting the resignation is prescribed by the statute, it is desirable that a (a) bye-law should be made regulating the steps to

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(a) The bye-law for the borough of Leicester is in the following terms:—

That every person, being duly qualified, who shall be elected to the office of alderman, or to the office of councillor of the borough of Leicester, and who shall neglect or refuse to accept

or take upon himself either of such offices respectively, to which he shall have been elected as aforesaid, or who having been elected into either of such offices, shall at any time resign the same, shall forfeit and pay a fine of one shilling; and it is hereby declared that in case

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be taken for this purpose. (Rawl. 312.) In the absence of any such bye-law it would appear that the resignation should be made to and accepted by the council. The resignation need not be by deed. (Arn. 183, and *R. v. Hughes*, 5 B. & C. 886, and *R. v. Morton*, 4 Q. B. 146.)

It seems doubtful how far the acceptance of an incompatible office will operate as a resignation or avoidance of a former office. The question was discussed in *R. v. Patteson* (4 B. & A. 9), in which all the authorities on the subject are collected. In that case Parke, J., in delivering the judgment of the court, said it was doubtful whether the general proposition could be supported, that under all circumstances, the acceptance of an incompatible office, by whomsoever the appointment to it is made, absolutely avoids the office; and upon reference to the authorities, the court thought that this proposition was not made out, but that it must be limited and qualified, and that such acceptance (though it might be ground of amotion) did not operate as an *absolute avoidance* in those cases where a person could not divest himself of an office by his own mere act, but required the concurrence of another authority to his resignation or amotion, unless that authority was privy and consenting to the acceptance of the second office.

The court then, after referring to some of the authorities in which the acceptance of an incompatible

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any person elected to the office of alderman or councillor shall afterwards resign the same, such resignation may be made by payment to the treasurer of the borough of Leicester of the fine hereby imposed, and by notice in writing under the hand of

the person so resigning, directed to, and left at the office of the town clerk of the said borough, and that on such payment being made as aforesaid, and such notice given, the office theretofore held by such person shall thereupon become vacant.

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office appeared to have been argued as the avoidance of a former office on the ground of an implied surrender or amotion from it, proceeded to observe: "If this view of the subject be correct, it seems to follow that the acceptance of the second office will not absolutely avoid the first, unless it be made by, or with the privity of, that authority which has the power to accept the surrender of the first or to amove from it." (*R. v. Patteson*, 4 B. & Ad. 9.)

It has been held that the office of councillor was avoided by the acceptance *from the council* of the office of clerk to a court of requests under a local Act. (*Staniland v. Hopkins*, 9 M. & W. 178.)

The acceptance of an incompatible office will not be prevented from operating as an avoidance of a former office by the fact that the election to the latter office was void; so that if the party is ousted from the second office on a *quo warranto*, he will not thereby be restored to his original office. (*R. v. Hughes*, 5 B. & C. 886; and see *R. v. Bond*, 6 D. & R. 333.)

## CHAPTER XIX.

### *Of Amotion from a Corporate Office.*

IN WHAT CASES.] It has already been seen that in the event of a mayor, alderman, or councillor becoming bankrupt or insolvent, or compounding with his creditors, or being continuously absent for a certain period, (pp. 116, 133, *ante*,) he shall cease to hold the office, and the council are to declare the office to be void, and to give public notice thereof. (M. C. s. 52.)

The course (*a*) pointed out by the Municipal Corporation Act in such case must be strictly followed.

At common law the power of amoving an officer for misconduct is incidental to the corporation at large, and is not confined to the body or person in whom the right of electing or appointing such officer is vested.

It follows from this rule, that as the powers of the corporate body in any corporation are now vested in the council, consisting of the mayor, aldermen, and councillors, the power of amotion is vested in them. (Arn. 185.)

The offences for which a corporate officer may be removed may be divided into three classes:—

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(a) See *R. v. Oxford*, 6 *Phippen*, *Id.* 966; and *R. v. A. & E. 349*; *R. v. Winchester*, 7 *A. & E. 215*; *R. v. Leeds*, 7 *A. & E. 963*.

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*First:* Such as relate to his corporate or official character, and amount to breaches of the condition expressly or tacitly annexed to the office.

Of this nature are the misapplication or embezzlement of the corporate funds; or not accounting for rents received; erasing entries from the corporate books, or falsifying them; and the like. (See *R. v. Chalke*, 1 Ld. Raym. 226; *R. v. Doncaster*, Say, 29; 2 Ld. Raym. 1566.)

*Secondly:* Such offences as have no relation to his corporate or official (*b*) character, but are, in themselves, of so infamous a character as to render the offender unfit to enjoy any public franchise. (2 Kyd. Corp. 62.)

Of this nature are perjury, forgery, or bribery. (*R. v. Tiverton*, 8 Mod. 186.)

*Thirdly:* Offences of a mixed nature, being not only against the duty of the officer, but also indictable at common law.

Thus, the taking part in a riotous assembly and assault upon other corporators, whereby the business of the corporation was impeded, has been held to be a good ground for amotion. (Haddock's case, T. Raym. 439; *R. v. Derby*, Ca. temp. Hardw. 155.)

In cases falling within the first and third class an amotion may take place, being for a breach of corporate duty, without any previous proceedings being had in a court of law; but in cases within the second class,

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(*b*) Habitual drunkenness has been held a good cause for removing an alderman, on account of the evil example to others, and his consequent inefficiency to discharge the duties of a magistrate. *R. v. Taylor*, 3 Salk. 231; *Taylor v. Gloucester*, 1 Rol. 409. Such a cause is happily not likely to arise at the present day. (Arn. 186.)

there must have been a conviction at law before the party can be amoved (c).

How MADE.] To render the amotion legal the council should be duly convened for the purpose, and the party against whom the proceedings are instituted must have notice to appear, which should be served upon him a reasonable time before the meeting.

The notice or summons should state the charge upon which it is proposed to amove the party with sufficient (d) particularity, but the same technical precision is not required as in an indictment; thus, an allegation that the party "forged, or caused to be forged," a certain document, has been held sufficient, though it would not have been so in an indictment.

If the party charged does not appear upon a proper summons, or, appearing, remains silent and does not deny the charge, it must be examined and proved, and all the proceedings must be conducted as if he had denied it. An amotion upon the ground that the silence of the party amounted to a confession has been held to be void, although it is not sufficient to enable him to maintain an action against those who amove him, in the absence of proof of malice. (*Harman v. Tappenden*, 1 East, 555.)

An amotion, though legal, has not the effect of invalidating any act which the corporator has previously done, or in which he has been concerned; but as soon as he is amoved he ceases *ipso facto* to be a corporator, and another may be elected into the vacant place.

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(c) *R. v. Richardson*, 1 Burr. 539; and *Haddock's case*, T. Raym. 439.

(d) See *R. v. Sandys*, 2 Barnard, 301; *Taylor v. Gloucester*, 1 Rol. 409; and *R. v. Lyme Regis*, Doug. 174.

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If the party who has been amoved continue to act, he is a mere usurper; and all such acts are void, and he may be ousted by a *quo warranto*, and punished for such usurpation; but an amotion from one office does not in general impair the title of a party to another office. (Arn. 188.)

MUNICIPAL CORPORATIONS ACT.] Although this Act does not in terms take away from the body corporate acting by the council the power of amotion possessed at common law, there is no reported case of the removal from office of any corporator by the act of the council since it came into operation, except in cases expressly provided for by the 52nd section. To justify such a course now that the numbers of the council are elected by the ratepayers, and not self-elected, as under the old charters, very flagrant misconduct should be shown, and it is impossible to say how the court of Queen's Bench would view such proceedings. It may, indeed, be maintained that the power of amotion in other cases is impliedly taken away by the power of amotion given by the 52nd sect. being limited to certain specific cases.

## CHAPTER XX.

### *Of the Office and Duties of Town-Clerk.*

**APPOINTMENT.]** The council are required to appoint a town-clerk, who may be an attorney, but must not be a member of the council, nor treasurer of the borough. (M. C. s. 58.)

He is to hold his office during pleasure.

The town-clerk cannot be elected auditor or assessor; (M. C. s. 37;) and he is *disqualified* from serving on any jury summoned within the borough, and *exempt* from serving on any jury summoned to serve in the county in which the borough is situate. (M. C. s. 122.)

The council are empowered to take such security for the due discharge of his official duties as they shall think proper. (M. C. s. 58).

**SALARY.]** The council may order such salary or allowance to be paid to him as they may think reasonable, which is to be paid out of the borough fund. (M. C. ss. 58, 92).

Such salary is the only compensation to which he is entitled for the discharge of duties specifically cast upon him by the Municipal Corporation Act, but the extent of assistance to be provided for him in the way of clerks or other assistants is for the determination of the council.

The Parliamentary Reform Act of 30 & 31 Vict. ch. 102, s. 3, however, provides that the "expenses" which he is entitled to charge under 6 Vict. ch. 18, s. 55, shall include all proper and reasonable fees and charges of any town-clerk to be thereafter made for his



trouble, care, and attention in the performance of the services and duties imposed upon him by the 6 Vict. ch. 18, or the 30 & 31 Vict. ch. 102, in addition to any money actually paid or disbursed by him.

Under the authority of this enactment, the town-clerks of most boroughs have made a charge for the large amount of additional labour cast upon them by the increased number of persons now admitted to the franchise and the requirements of the new law with respect to the register—and to some reasonable remuneration they are clearly entitled.

**SPECIFIC DUTIES.]** The duties of the town-clerk under the Municipal Corporation Act are as follows :—

To keep the “Freemen’s Roll,”—to enrol thereon every person whose claim thereto shall have been established before the mayor—to keep a true copy of such roll to be perused by any person, without fee, at all reasonable times ;

And to deliver a copy thereof to any person requiring the same, on payment of a reasonable price. (M. C. s. 5.)

To cause copies of the burgess lists which are to be delivered to him by the overseers on 1st September, (see 20 & 21 Vict. ch. 50, s. 7,) to be forthwith printed. (M. C. s. 15.)

To deliver a copy of any such list to any person requiring the same, on payment of a reasonable price. (M. C. s. 15.)

To cause a copy of all such lists to be fixed on or near the town-hall, or in some public and conspicuous place in the borough, every day during the week preceding the 15th of September. (M. C. s. 15.)

To cause lists of claimants and persons objected to to be made out according to the forms prescribed by the schedule to the Municipal Corporations Act, and

cause copies of such lists to be fixed in like manner during the eight days next preceding the 8th of October. (M. C. s. 17). If he neglects or refuses to receive, print, and publish the lists, or refuses to allow any list to be perused by any persons "having right thereunto," he is liable to a penalty of 50*l.*, to be recovered by action. (M. C. s. 48).

To keep a copy of such last mentioned lists to be perused *by any person* without fee, at all reasonable hours during these eight days. (M. C. s. 17.)

To deliver a copy of each of such lists to any person requiring the same, on payment of not more than one shilling for such copy. (M. C. s. 17.)

To produce the burgess lists and the lists of claimants and persons objected to at the opening of the revision court. (M. C. s. 18.)

To keep the revised burgess lists. (M. C. s. 22.)

To cause the burgess lists to be fairly and truly copied out into one general alphabetical list in a book (the burgess roll,) with every name numbered, beginning the numbers from the first name and continuing them in a regular series to the last name, and to be completed before the 22nd of October. (M. C. s. 22.)

To have copies of the burgess-roll, written or printed, for sale at a reasonable price. (M. C. s. 23.)

To pay over the monies arising from the sale of the burgess roll and of all lists to the treasurer. (M. C. s. 23.)

To keep the *voting papers* at the election of councillors for six months at least after the election, and to allow any *burgess* to inspect the same on payment of one shilling. (M. C. s. 35.)

To make out the lists of freemen, and of persons claiming or objected to as freemen entitled to vote at parliamentary elections; and to publish the parliamen-

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tary register in conformity with the provisions of 30 & 31 Vict. ch. 102.

To prepare, sign, and publish, seven days at least before the day fixed for the election of any councillor, auditor, or assessor, a notice on the town-hall door, and in some other conspicuous parts of the borough or ward for which the election is to be held, requiring nominations to be sent to the town-clerk at least two whole days, Sunday excluded, before the day of election, and to cause the names of the persons so nominated, with their christian and surnames, and places of abode, to be printed and placed on the town-hall door, and in some other conspicuous parts of the borough or ward at least one whole day (Sunday excluded) before the day of election, (22 Vict. ch. 35, ss. 5, 6, as extended by 32 & 33 Vict. ch. 55, ss. 6, 7,) and to proceed with respect to the election in manner prescribed by the 8th section of the Nomination Act, (see p. 95, *ante*. See *R. v. Arnold*, 4 A. & E. 657, and *R. v. Blagg*, 10 Jur. 983.)

To keep the voting papers at the election of aldermen among the records of the borough. (1 Vict. ch. 78, s. 14.)

Where a borough is divided into *wards*, to keep a copy of the particulars of the division among the public documents of the borough. (M. C. s. 39.)

GENERAL DUTIES.] To make all the necessary arrangements for the election of auditors and assessors on 1st March, and also in the case of vacancies.

To act as adviser of the mayor at parliamentary elections, when the mayor is returning officer.

To summon the council to all meetings (a), and in

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(a) Although it is not necessary that the business to be transacted at quarterly meetings should be stated in the summons of the town-clerk, it is very desirable that this should be done, as it is important that the members of the council should come prepared for the discussion of the business.

the case of special meetings, stating the business to be transacted.

To attend meetings of the council, and take minutes of the proceedings.

To attend all meetings of the various committees at which any important business is to be considered, and such other meetings as he may be required to do by his engagement with the council.

In case of the death, resignation, or lawful removal of the mayor to convene a meeting of the council (as authorized by 16 & 17 Vict. ch. 79, s. 9,) within ten days thereafter, (M. C. s. 49,) to supply the vacancy.

To act as the general adviser of the mayor and the council.

INCAPABILITY OF ACTING.] In any borough in which there shall be no town-clerk, or in which the town-clerk shall be dead or incapable of acting, all matters required by the Municipal Corporation Act to be done by the town-clerk, are to be done by the person executing duties in such borough similar to those of town-clerk; and if there be no such person, or if such person shall be dead or incapable of acting, then by such fit person as the mayor shall appoint. (M. C. s. 16.)

DEEDS.] To have the charge and custody of all the charters, deeds, muniments, and records of the borough. (M. C. s. 65.)

The town-clerk has no lien on the corporation muniments, which he holds merely in that capacity, although he has on papers, with respect to which he has done work as an attorney or solicitor. (*R. v. Sankey*, 5 A. & E. 43.)

DEFAULT.] If, within three days after receiving a notice under the hands of three or more of the council, the town-clerk neglects to deliver up all books, papers,

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and writings in his custody or power relating to the execution of the Municipal Corporation Act, or to give satisfaction to the council respecting the same, he may be proceeded against summarily before two justices of the peace, who are empowered to commit him to the house of correction, until he shall have delivered them up, or have given such (c) satisfaction to the council respecting them. (M. C. s. 60.)

The corporation are not precluded by the Act from any remedy they may have by action; but they cannot proceed against the town-clerk both by action and in a summary way, for the same cause. (M. C. s. 60.)

ACCOUNTS.] The town-clerk is to deliver to the council, at such times during the continuance of his office as they shall direct, or within three months after the expiration thereof, a true account in writing of all matters committed to his charge, and of all monies received by him for the purposes of the Municipal Corporation Act; and how much shall have been paid and disbursed, and for what purposes, with vouchers, &c., and upon his neglect to do so he may be proceeded against in a summary way, as in the case of non-delivery of papers; and may be committed to gaol till he shall have delivered such account. If any money is found to be due from him, it may be levied by distress, and in default thereof he may be committed to gaol for three calendar months, or until he shall have paid what was due from him, or a composition be agreed to by the council. (M. C. s. 60)

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(c) See *in re, Gateshead*, 6 *land*, 1 M. & G. 591, and *Eg-  
A. & E. 550; Baylis v. Strick-* *ginton's case*, 2 E. & B 717.

## CHAPTER XXI.

### *Of the Office and Duties of Treasurer.*

APPOINTMENT.] The Council are required to appoint a treasurer; he must not be the town-clerk, nor a member of the council; (M. C. s. 58;) and he is to hold his office during the pleasure of the Council, and not by an annual appointment. (6 & 7 Vict. ch. 89, s. 6.)

VACANCY.] In the case of a vacancy in the office by death, resignation, amotion, or otherwise, the council are to appoint a successor within twenty-one days from the happening of the vacancy. (6 & 7 Vict. ch. 89, s. 6.)

The Council may take security for the discharge of his duties, and have power to fix such salary or allowance as they shall think reasonable. (M. C. s. 58.)

DUTIES.] The duties of the treasurer, under the Municipal Corporation Act, are as follows:—

To receive all penalties and forfeitures recovered in a summary way before the justices of a borough in which a separate court of quarter sessions shall be holden, and to apply the same to the credit of the borough fund, whether the same are made payable to the Crown or to the corporation, except penalties to informers or parties aggrieved, or forfeitures under any Act relating to the customs, excise, and post office, or to trade(a) or navigation, or to any branch of the revenue. (M. C. s. 126.)

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(a) In *Seamen's Hospital Society v. Liverpool*, 4 Exch. 180, it was held that penalties adjudged under the Merchant Seaman's Act, of 7 & 8 Vict. ch. 112, were within the exception as to trade and navigation.

To receive all monies due from other officers of the Council. (M. C. s. 60.)

To pay no money on account of the Corporation, save only in such case as is provided for by the Municipal Corporations Act, unless upon the order in writing of the Council, signed by three or more members thereof, and countersigned by the town-clerk; or by order of the court of sessions, or of a justice acting for the borough, in the discharge of his judicial duty, in cases provided for by the Act, or in such case as a court of sessions for any county, or a justice for a county acting in the discharge of his judicial duty may make an order for payment of money on the treasurer of such county, or for the payment of the salary granted to any recorder or police magistrate. (M. C. s. 59)

CERTIORARI.] Under the Municipal Corporation Act an order of the town-council for the payment of money out of the borough fund would not have been removable by *certiorari*; (M. C. s. 132;) but it having been considered expedient to give all persons interested in such fund a direct and easy remedy for the misapplication thereof, it was enacted by 1 Vict. ch. 78, s. 44, that such orders may be removed into the Court of Queen's Bench, according to the usual practice of that court with respect to writs of *certiorari*, and may be disallowed (*b*) or confirmed with costs according to the judgment and discretion of the court.

This enactment will apply although the order was irregular in point of form, from not having been signed by three members of the council, and countersigned by

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(*b*) As to the costs of opposing *Greene*, 4 Q. B. 646; *R. v. the writ being payable out of* *Duncan*, 5 Q. B. 959; and *R. the borough fund, see R. v. v. Dunn*, 5 Q. B. 959.

the town-clerk, as required. (*R. v. Lichfield*, 12 L. J. Q. B. 308.)

The Court of Queen's Bench does not consider itself bound to disallow all payments which have been made, although payment of the money could not have been enforced. (*R. v. Prest*, 16 Q. B. 33.)

The application for the writ is not limited to six months, as in cases provided for by 13 Geo. 2, ch. 18, s. 15, but the Court of Queen's Bench will, it appears, be guided by the circumstances of each case. (*Roberts v. Corporation of Sheffield*, 24 L. T. (N. S.) 659.)

ACCOUNTS.] The treasurer is to keep accounts of all monies received and paid by him, and of the several matters for which they shall have been received and paid; and the books containing the accounts shall at all seasonable times be open to the inspection of any of the aldermen or councillors; and all the accounts with all vouchers and papers relating thereto are to be submitted by him to the auditors of the borough, (*i. e.*,) the two elective auditors and such member of the council as the mayor shall name, on the first day of March in every year, or within ten days after a vacancy, as their co-auditor, (M. C. s. 93,) in the months of March and September in each year; and after such accounts have been audited in September, the treasurer shall cause an abstract thereof to be printed, which is to be open to the inspection of the ratepayers, and a copy of which is to be delivered to any ratepayer applying for the same on payment of a reasonable price. (M. C. s. 93.)

A statement of all monies received and expended is to be transmitted to the secretary of state, before the first day of March in each year, (6 & 7 Will. 4, ch. 104, s. 10,) made up to the last period of audit. (1 Vict. ch. 78, s. 43.)

The treasurer is required to keep separate accounts



of the receipts and payments of all money raised under the Public Libraries Acts—under the Lunatic Asylum Acts—and also under the Police Superannuation Acts.

It is also important that the accounts of all money received and paid under local Acts should be so kept as to show the capital borrowed, and its gradual repayment, separately from that of the income accruing in the shape of rents or rates, and the current expenditure.

## CHAPTER XXII.

### *Of the Coroner.*

**APPOINTMENT.]** The Council of every borough in which a separate court of quarter sessions shall be held, are required to appoint a coroner, within ten days after the grant of such court, and to fill up every vacancy within ten days thereafter; (M. C. s. 62;) and the coroner cannot be an alderman or councillor. (*Id.*) The coroner will continue in office so long as he shall well behave himself in his office of coroner. (*Id.*) The office is therefore of a freehold nature, and the holder can be removed for misconduct only, according to the well known law in such cases.

It has been decided that a coroner so appointed is not a corporate officer within the 9th Ann. c. 20, s. 9, and therefore upon judgment of ouster in a *quo warranto*, the relator is not entitled to costs. (*R. v. Grimshaw*, 5 D. & L. 249.)

**DEPUTY.]** In case of illness or unavoidable absence the coroner may appoint, by writing under his hand and seal, a barrister or an attorney, not being an alderman or councillor of the borough, to act for him as deputy coroner during such illness or unavoidable absence, but no longer or otherwise; but the mayor or two of the borough justices must on each occasion certify, under their hands and seals, the necessity for such appointment, (6 & 7 Will. 4, ch. 105, s. 6,) and the certificate stating the cause of the absence of the coroner is to be openly

read to every inquest summoned by the deputy. (6 & 7 Will. 4, ch. 105, s. 6.) A deputy coroner as well as a coroner is privileged from arrest while preparing to hold an inquest. (*Ex parte Deputy Coroner of Middlesex*, 6 H. & N. 501.)

The fact of the coroner being engaged in holding an inquest is a sufficient cause for the appointment of a deputy for the purpose of holding another inquest, and the inquisition, when held before a deputy, is properly described as being taken before the principal coroner, and is properly signed in the name of the principal coroner, "by A. B. his deputy." If the jury are sworn, and the proceedings begin before the deputy, he should conclude them, though the principal coroner should be present in the course of holding the inquest. (*R. v. Perkins*, 7 Q. B. 165.)

Where a borough coroner has been appointed, no one but himself or his deputy is to take an inquisition in the borough. (M. C. s. 62.)

FEEs.] The coroner is entitled to a fee of 20s. for every inquest, and also an allowance for his travelling expenses at the rate of 9d. per mile, when he is compelled to travel more than two miles from his place of abode, to be paid out of the borough fund, by order of the court of quarter sessions. (M. C. s. 62.)

By a subsequent statute (1 Vict. ch. 68) relating to the payment of coroners' expenses generally, it is enacted by the third section, that an account of all sums paid by any coroner of a borough shall be laid within four months after any inquest before the town council, accompanied by vouchers; and the council may allow the same, and order them to be paid by the treasurer, and also the sum of 6s. 8d. for every inquest, over and above all other fees and allowances to which he is by law entitled.

It would seem, therefore, that a borough coroner is entitled by this Act to the fee of 6*s.* 8*d.*, over and above the fee of 20*s.* before mentioned; but it is remarkable that the last-mentioned statute makes no reference to the Municipal Corporation Act. (Arn. 201.)

In boroughs, not having a separate court of quarter sessions, the coroner for the county in which the borough is situate is to take the inquisition. (M. C. s. 64. See 33 J. P. 270.)

The salaries and accounts of coroners for counties are regulated by 7 & 8 Vict. ch. 92, and 23 & 24 Vict. ch. 116.

RETURNS.] Every borough coroner is required, on or before the 1st of February in every year, to make a return to the secretary of state of all inquests held by him relating to the death of any person for the year ending on the preceding 31st of December. (M. C. s. 63.)

## CHAPTER XXIII.

### *Of the Watch Committee and the Borough Constables.*

APPOINTMENT.] The council are from time to time to appoint a sufficient number of their own body, who, together with the mayor for the time being, shall be called the Watch Committee, and all powers given to the committee may be executed by the majority present at any meeting, the whole number present not being less than three. (5 & 6 Will. 4, ch. 76, s. 76.)

The chairman of any meeting may give an original vote, but the Act does not give him a second or casting vote.

CONSTABLES.] The committee are required to appoint a sufficient number of constables for the borough, who are to be (a) sworn before a justice having jurisdiction within the borough. (M. C. s. 76.)

Such constables are to have power to act as such, not only within the borough, but also within the county in which the borough is situated, and within every county being within seven miles of the borough, and also within all liberties in such county, have all such powers and privileges, and are liable to all such duties and responsibilities as any constable duly appointed may have within his constablewick by virtue of the common law, or of any statutes made or to be made, and shall obey all such lawful commands as they may from time to time receive from any justices having jurisdiction within the borough, or within any

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(a) Since "The Promissory should be made in lieu of an Oaths Act, 1868," a declaration oath.

county in which they shall be called on to act as constables. (M. C. s. 76.) See *Maberley v. Titterton*, 7 M. & W. 540; and *Penny v. Slade*, 5 Bing. N. C. 469.

But by a subsequent statute, (22 & 23 Vict. ch. 32, s. 2,) it is enacted, that borough constables shall not be required to act out of their borough, except in execution of warrants of borough justices, or in pursuance of directions of the watch committee, in cases of special emergency.

The watch committee may make regulations for preventing neglect or abuse, and for rendering the constables efficient in the discharge of their duties; and the committee or any two justices having jurisdiction within the borough, may at any time suspend or dismiss any constable whom they shall think negligent in the discharge of his duty, or otherwise unfit for the same; and no man so dismissed can be re-appointed without the consent of two justices having jurisdiction within the borough. (M. C. s. 77.)

Any constable when on duty may apprehend any idle and disorderly persons whom he shall find disturbing the public peace, or whom he shall have just cause to suspect of intention to commit felony, and deliver them to the constable in attendance at the nearest watch-house, in order that they may be secured until brought before a justice, or bail may be taken for their appearance before a justice. (M. C. s. 78.)

BAIL.] Where any person charged with any petty misdemeanor shall be brought without the warrant of a justice into the custody of any constable during his attendance in the *night-time* at any watch-house, such constable may take bail by recognizance, without fee or reward, from persons brought before him; such recognizance being conditioned for the appearance of the party charged before a justice at some specified time

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and place within two days, entering the particulars of the recognizance in a book there kept. (M. C. s. 79.)

In default of appearance at the time and place appointed, or within one hour after, the recognizance is to be forfeited, and dealt with as here provided, but the justice may, on the application of any person on behalf of the party charged, postpone the time of hearing and enlarge the recognizance. (M. C. s. 79.)

**WAGES.]** The watch committee, subject to the approbation of the council, are to fix the salaries, wages and allowances of the constables, which are to be paid by the treasurer. (M. C. s. 82.)

**NEGLECT OF DUTY.]** Any constable guilty of any neglect of duty, or of disobedience of any lawful order, is liable, on conviction before two justices, to imprisonment for not exceeding ten days, or to be fined not exceeding 40s., or to be dismissed from his office, as the justices shall in their discretion think meet. (M. C. s. 80.)

The watch committee are also empowered by 22 & 23 Vict. ch. 32, s. 26, to suspend any constable whom they shall think remiss or negligent in the discharge of his duty, or otherwise unfit for the same, and also to fine any constable not exceeding one week's pay, and to reduce him from a superior to an inferior rank, in addition to any other punishment to which he may be liable.

**ASSAULT.]** Any person (a) assaulting or resisting a constable, appointed under this Act, in the execution of

(a) Under the "Prevention of Crimes Act, 1871," s. 12, the offence of an "assault on any constable when in the execution of his duty," is punishable by a penalty of not exceeding 20*l.*, and in default of payment by imprisonment, with or without hard labour, for not exceeding

six months, or, in the discretion of the court, by imprisonment (without any fine) for not exceeding six, or, in case such person has been convicted of a similar assault within two years, nine months, with or without hard labour.

his duty, or aiding or inciting any person so to assault or resist, is liable, on conviction before two justices, to a penalty of not exceeding 5*l.*, or he may be indicted for the offence; but he cannot be proceeded against summarily and also by indictment for the same offence. (M. C. s. 81.)

REWARDS, &c.] The watch committee have power, subject to the approbation of the council, to award rewards to constables for extraordinary diligence or exertion, or as a compensation for wounds, or severe injuries received in the performance of their duty, or as an allowance to such of them as shall be disabled by bodily injury received, or be worn out by length of service, and to direct the payment of all other charges and expenses for the purpose of the constabulary force. (M. C. s. 82.)

The committee may also under 22 & 23 Vict. ch. 32, s. 24, with the approbation of the council, and on the recommendation of the police superintendent, grant to any constable a gratuity of not exceeding 3*l.* as a reward for any meritorious act done by him in the execution of his duty.

The committee may, it seems, with the approbation of the council, order the payment of the (a) costs of defending borough constables on a prosecution incurred by them in the discharge of their duty; but the council themselves cannot originate such an order, even although the payment may have been recommended to them by a report from the watch committee. (*R. v. Thompson*, 5 Q. B. 477.)

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(a) Where the Towns Police Clauses Act is in force, the 9th section will authorize the local authority to pay the expenses of prosecuting felons or other offenders, or of defend- ing constables in prosecutions against them, for acts done in the execution of their duty, and to make rewards or allowances in certain cases.



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If any extraordinary expenses have been necessarily incurred in the apprehension of offenders or the execution of the orders of any justice having jurisdiction within the borough, such expenses having been first examined and approved by the justice, may then be ordered to be paid by the council. (M. C. s. 82.)

**SPECIAL CONSTABLES.]** Special constables are to be appointed by two or more justices yearly in October; they are to act when required to do so by warrant of any justice having jurisdiction within the borough, stating therein that the ordinary police force is insufficient at that time to maintain the peace of the borough, and they are to receive 3s. 6d. per day each, for any day they are called out to act, and on their appointment, to take the oath (now a declaration, see the Promissory Oaths Act, 1868, required by 1 & 2 Will. 4, ch. 41, and to have all the powers and immunities of that Act, (M. C. s. 83.) The persons to be appointed are to be inhabitants of the borough not legally exempt from serving the office of constable. (M. C. s. 83.)

**WATCH RATE.]** The council are empowered to levy watch rates of not exceeding 8d. in the pound in the year, for the purpose of paying the police expenses, as authorized by 22 & 23 Vict. ch. 32, s. 6, amending 2 & 3 Vict. ch. 28, s. 1, and 3 & 4 Vict. ch. 28, s. 2.

**QUARTERLY REPORTS.]** So much of the 86th section of the Municipal Corporation Act as required quarterly reports to the Secretary of State, of the number of Constables, and of their arms, clothing, salaries and allowances, and of the number and situation of all station-houses, was repealed by 21 & 22 Vict. ch. 67, s. 2; but so much as required quarterly returns of copies of all rules, orders and regulations which shall from time to time be made by the watch committee, or the

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council for the regulation of the police force, is still in force. The watch committee are required to send to the Secretary of State, in the month of October, a return of the number of offences reported to the police, for the year ending 29th of September, and of the number of persons apprehended, the nature of the charges, and the result of the proceedings. (19 & 20 Vict. ch. 69, s. 14.)

**ELECTIVE FRANCHISE.]** No constable appointed under the Municipal Corporation Act, except a (b) special constable, is capable during the time he continues to be such constable, or within six calendar months after he has ceased to be such constable, of giving his vote for the election of any person to any municipal office, or of any member to serve in parliament for the borough, or for any county in or to which the borough is situate, either wholly or in part, or adjoins, or for any borough within any such county; nor can he by word, message, writing, or in any other manner endeavour to persuade any elector to give or dissuade him from giving his vote, under the penalty of ten pounds, recoverable in any court of competent jurisdiction, by any person who shall sue for the same, within six months after the offence, one half to be paid to the person suing, and the other half to the treasurer of the borough. (19 & 20 Vict. ch. 69, s. 9.)

The section however provides that nothing therein contained shall subject any constable to any penalty for any act done by him at any election in the discharge of his duty.

**GOVERNMENT INSPECTOR.]** Her Majesty is authorized to appoint inspectors to visit and inquire into the

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(b) Under 17 & 18 Vict. ch. 102, s. 8, no person having a right to vote at the election for any place, shall be liable or compelled to serve as a special constable at the election for any member for such place, unless he consents so to act.

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state and efficiency of the police force, and the state of the police stations, charge rooms, cells, lock-ups, or other premises occupied for the use of the police, and to report thereon to the Secretary of State. (19 & 20 Vict. ch. 69, s. 15.)

GOVERNMENT ALLOWANCE.] On the certificate of the Secretary of State that the police has been maintained in a state of efficiency in point of numbers and discipline for the year ending 29th September, the treasury may pay not exceeding one-fourth of the charge of the police for pay and clothing. If such certificate be withheld, the report of the inspector is to be sent to the watch committee, who may address any statement relating thereto to the Secretary of State; and if the certificate be finally withheld, a statement of the grounds for so doing, with the statement of the watch committee, is to be laid before parliament. (*Id.* s. 16.)

No such sum is to be paid towards the pay and clothing of the police of any borough not being consolidated with the police of the county, unless the population of the borough according to the then last census, shall exceed 5000. (*Id.* s. 17.)

POLICE SUPERANNUATION.] The provisions of the Acts relating to the establishment of a police superannuation fund will be found in a subsequent chapter.

HIGH CONSTABLE.] By 32 & 33 Vict. ch. 47, the office of high constable is abolished, and certain duties heretofore discharged by this officer, are in future to be performed by the clerk to the justices.

## CHAPTER XXIV.

### *Of the Borough Justices and their Clerk.*

COMMISSION.] Upon the petition of the council of the boroughs named in Schedules (A.) and (B.) of the Municipal Corporation Act, a commission may be issued to so many persons as the Crown shall from time to time think proper, to act as justices of the peace therein. (M. C. s. 98). In boroughs which have not a separate court of quarter sessions, the justices for the county may exercise jurisdiction therein as fully as in the county. (M. C. s. 111, see *R. v. Deane*, 2 Q. B. 96, and *R. v. Bristol*, 4 E. & B. 265.)

QUALIFICATION.] No qualification by estate is required for a borough justice, nor is it necessary that he should be a burgess; (M. C. s. 101;) nor is a party disabled from acting as a justice by reason of his being liable to be rated to any borough rate. (M. C. s. 128.) An attorney or solicitor may be appointed a justice for a borough (a).

A justice is required to reside within the borough, or within seven miles thereof, (M. C. s. 98), but a justice will be deemed to reside within the borough if he occupies any house, shop, warehouse, or other premises within the same. (24 & 25 Vict. ch. 75, s. 3.)

The mayor is *ex officio* a justice for the borough during his year of office, and the year following; (M. C. s. 57;) and where there is a recorder, he is also a justice *ex officio*. (Id. s. 103.)

OATHS OF OFFICE.] No person assigned to keep the peace within the borough can act as a justice until

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(a) The disqualification of attorneys, solicitors, and proctors from being justices for counties created by 5 Geo. 2, ch. 18, was abolished by 34 & 35 Vict. ch. 18; but no person can act as a justice for a county in which he carries on his profession.

he has taken the oaths required to be taken by justices of the peace (except as to qualification by estate), and has also made a declaration that he will faithfully and impartially execute the office to the best of his judgment and ability. (M. C. s. 104.)

The declaration may be made before the mayor or any two aldermen or councillors of the borough. (M. C. s. 104.)

The oaths, which are now the oath of Allegiance and judicial oath, as provided by "The Promissory Oaths Act, 1868," are as directed by "The Promissory Oaths Act, 1871," s. 2, to be taken before such persons as Her Majesty may appoint, or, in England, in open court in the Court of Chancery, Queen's Bench, Common Pleas, or Exchequer, or in open court at the General or Quarter Sessions of the Peace for the County, Borough, or place in which the person taking the oaths acts as justice.

The ordinary borough justices are not permitted to act in that capacity either in courts of gaol delivery, or at general or quarter sessions, nor in making or levying any county rate, or rate in the nature of a county rate. (M. C. s. 101.)

JUSTICES' CLERK.] The justices are required to appoint a clerk, who is removable (b) at their pleasure. (M. C. s. 102.)

The justices may not appoint or continue as their clerk any alderman, or councillor, or the clerk of the peace of the borough, or of the county in which the borough is situate, or his partner. (24 & 25 Vict. ch. 75, s. 5).

The clerk cannot by himself or his partner, or other-

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(b) As this office is removable at pleasure, the court of Queen's Bench will not grant a *quo warranto* to try the right to the office. (See *R. v. Fox*, 27 L. J. Q. B. 151.)

wise, be directly or indirectly employed or interested in the prosecution of any offender committed for trial by the borough justices at any court of gaol delivery or general or quarter sessions, under the penalty of 100*l.*, one moiety payable to the borough fund, and the other moiety with costs of suit to any person who may sue for the same. (M. C. s. 102.)

**FEES OR SALARY.]** A table of the fees payable to the clerk may be made from time to time by the council, subject to the confirmation or allowance of the secretary of state, who may make any alterations or additions therein. (M. C. s. 124.)

The council may recommend to one of the secretaries of state that the clerk should be paid by salary out of the borough fund, instead of by fees, and may also recommend the alteration of any salary ordered under the Act, or the payment by fees in lieu of salary, and the secretary of state may, by order, fix or vary the amount of the salary, or direct the payment of fees. (14 & 15 Vict. ch. 55, s. 9.)

In fixing the amount of the salary of any clerk appointed before the passing of this Act, regard is to be had to the tenure of his office, and no order can be made on the recommendation of the council in relation to the mode of payment or the amount of salary, unless at a meeting of the borough justices they approve of such recommendation, and such approval be certified to the secretary of state under the hand of the chairman. (*Id.* s. 9.)

The order may direct the payment of a salary for part, and fees for other part of the business; (*Id.* s. 10;) and when paid by salary the clerk must account to the council for all fees received by him; (*Id.* s. 11;) and the justices may in any proceedings before them remit any fee payable in whole or in part on account

of poverty or other reasonable cause, making and signing an entry thereof, and of the reason for the remission in a book kept for the purpose by the clerk. (14 & 15 Vict. ch. 55, s. 12.)

**JURIES.]** Justices are *exempt* and *disqualified* from serving on any jury summoned within the borough, and *exempt* from serving on any jury summoned to serve in the county wherein the borough is situate. (M. C. s. 122.)

**PROTECTION.]** All actions against any person for anything done in pursuance of the Municipal Corporation Act, must be laid and tried (see *R. v. Mitchell*, 2 Q. B. 636,) in the county where the fact was committed, and must be commenced within six calendar months after the fact committed; written notice of the action must be given to the defendant one calendar month before its commencement; (*R. v. Burrell*, 12 A. & E. 460, and 5 & 6 Vict. ch. 97, s. 4;) the defendant may plead the general issue; and if he has made a sufficient tender of amends before action brought, or has paid a sufficient sum into court, the plaintiff is not to recover; and if the defendant has judgment, he is to recover his full costs as between attorney and client. (M. C. s. 133.) The Act of 11 & 12 Vict. ch. 44, gives further protection to justices, as to which see 13th ed. of "*Stone's Justices' Manual*," p. 465.

**GAOLS.]** Justices have various powers with respect to the borough prison, other powers are vested in town councils. We give in a subsequent chapter a brief exposition of the duties of justices and councils.

**DUTIES.]** The general duties of a justice of the peace do not come within the scope of this work.

## CHAPTER XXV.

### *Stipendiary Magistrates.*

**APPOINTMENT.]** The council, if they think it requisite that a salaried police magistrate or magistrates should be appointed in the borough, have the power of making a bye-law fixing the amount of salary. Upon such bye-law being transmitted to the secretary of state, he may appoint one or more persons, according to the number fixed in the bye-law. The person so appointed must be a barrister of not less than five years' standing; and he is to hold his office *during the pleasure of the Crown*. His salary is to be paid out of the borough fund. In case of a vacancy it is necessary that a fresh application should be made by the council. (M. C. s. 99.)

The 26 & 27 Vict. ch. 97, s. 3, confers certain powers on the local board of health of any city or place having a population of 25,000 inhabitants, and not being a Municipal Corporation, to apply to a secretary of state for the appointment of a stipendiary magistrate for their district, and to make a bye-law fixing the salary.

**DEPUTY.]** A stipendiary or police magistrate, with the approval of the secretary of state, may appoint a deputy, who shall have practised as a barrister-at-law for at least seven years, to act for him for not exceeding six weeks in any consecutive twelve calendar months, and also in case of sickness or unavoidable absence, a deputy for not exceeding three months at one time. (32 & 33 Vict. ch. 34, s. 2.)



## CHAPTER XXVI.

### *Of the Court of Quarter Sessions, the Recorder, and the Clerk of the Peace.*

GRANT OF COURT.] If the council are desirous that a separate court of quarter sessions shall be holden for the borough, they are to signify the same by petition to the Queen in council, setting forth the grounds of the application, the state of the gaol, and the salary which they are willing to pay to a recorder. The crown thereupon may (a) grant a court of quarter sessions of the borough. (M. C. s. 103.)

RECORDER.] The crown may appoint a recorder for the borough, who must be a barrister of not less than five years' standing, but may not be an alderman or councillor, or police magistrate of the borough; he is not disqualified, however, from being appointed a revising barrister. He is ineligible to serve in parliament for the borough. He is to hold his office *during good behaviour*. He may be appointed to act for two or more boroughs conjointly. In case of a vacancy occurring, the Crown may appoint another recorder. (M. C. s. 103.)

The recorder is to be a justice of the peace for the

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(a) Doubts having been entertained as to the validity of charters granted to Manchester, Bolton, Birmingham, Wolverhampton, Warrington, Wakefield, Ashton-under-Lyne, Sal-

ford, Halifax, Oldham, and Tynemouth, those charters were confirmed by 5 & 6 Vict. ch. 111; 11 & 12 Vict. ch. 93; and 13 & 14 Vict. ch. 42.

borough, and is to have precedence next after the mayor. (M. C. s. 103.)

His salary is to be paid out of the borough fund.

Before he acts, he is to take the oaths required to be taken by other justices of the peace, and to make a declaration in the terms prescribed by the Act. (M. C. s. 104.)

The declaration may be taken before the mayor or any two aldermen or councillors; (M. C. s. 104; and the oath of allegiance and judicial oath required by "The Promissory Oaths Act, 1868," in manner prescribed by "The Promissory Oaths Act, 1871." (See p. 132, *ante*.)

BOROUGH SESSIONS.] The borough sessions are to be held quarterly, or at such other and more frequent times as the recorder may think fit, and he is the sole judge. (M. C. s. 105.)

The recorder has cognizance of all crimes, offences, and matters whatsoever cognizable by any court of quarter sessions for counties in England, including appeals against orders of removal made by borough justices, (*R. v. Salop*, 2 Q. B. 85, and *R. v. Suffolk*, *Id.* 72,) notwithstanding the language of the 6th section of the 8 & 9 Will. 3, ch. 30, which provides that such appeals shall be heard at the sessions for the county, "and not elsewhere."

The recorder has jurisdiction in prosecutions under 25 Geo. 2, ch. 36, s. 5, for keeping disorderly houses, notwithstanding the word "county" is used in that section. (*R. v. Charles*, 5 L. T. (N. S.) 328.)

The recorder may try an appeal against an order of borough justices directing payment of the expenses incurred by removing a pauper lunatic to an asylum. (*R. v. St. Lawrence, Ludlow*, 11 A. & E. 170.) And he is expressly empowered to hear appeals against

summary convictions; (M. C. s. 131;) and also appeals against Borough rates; (M. C. s. 92;) and Watch rates. (8 & 9 Vict. ch. 110, s. 3.)

A recorder or deputy recorder who has an interest as a shareholder or ratepayer in an appeal, is disqualified from hearing it. (*R. v. Recorder of Cambridge*, 30 L. T. 164.)

An order of quarter sessions in an appeal against a borough rate is not removeable by *certiorari*. (M. C. s. 132. See *R. v. Ripon*, 7 A. & E. 417.)

The recorder has the same power to do all things necessary for exercising his jurisdiction as is possessed by the court of quarter sessions for any county; (M. C. s. 105;) but with respect to inspectors of weights and measures in boroughs, the power of appointing these officers is now vested in the council by virtue of 24 & 25 Vict. ch. 75, s. 6, extending 22 & 23 Vict. ch. 56, s. 4.

But he has no power to make or levy any rate, or to do any act in relation thereto, (M. C. s. 105, and 6 & 7 Will. 4, ch. 105, s. 8,) or to grant licences to publicans, or to hear an appeal against the refusal of borough justices to grant such a licence, (the appeal in this case lying to the quarter sessions for the county, under 9 Geo. 4, ch. 61, s. 27; see *R. v. Deane*, 2 Q. B. 96,) or to exercise any of the powers specially vested in the council. (M. C. s. 105.)

ASSISTANT BARRISTER.] If it shall appear to the recorder that the sessions are likely to last more than three days, including the day of assembling, and the mayor or two aldermen of the borough shall have certified before each such session to the recorder that the council have resolved that it will be expedient that a second court shall be formed, the recorder may appoint, under his hand and seal, a barrister of not less than

five years' standing, to preside over such court. The name of such barrister must at some previous time have been transmitted to and approved by a secretary of state. (1 Vict. ch. 19, s. 1.)

Such barrister is to be styled "assistant barrister," and is to have the same power in his court as the recorder himself. (*Id.*) He is to receive ten guineas per diem, but not for more than two days. An assistant clerk may be appointed by the clerk of the peace; at the remuneration of two guineas a day, and an additional crier by the recorder, at half-a-guinea a day, for the second court. None of these officers to be paid for more than two days. (*Id.* s. 2.)

If the recorder shall be of opinion that the second court is no longer required, he may direct the assistant barrister to adjourn the same. (*Id.* s. 1.)

DEPUTY RECORDER.] In case of sickness or unavoidable absence of the recorder, he may, under his hand and seal, appoint a barrister of not less than five years' standing to act as deputy recorder at the sessions then next ensuing or then being held, and not longer. (6 & 7 Vict. ch. 89, s. 8.)

The sessions held before such deputy recorder are not to be considered invalid by reason of the cause of the recorder's absence not being deemed to be unavoidable. (*Id.* s. 8.)

ADJOURNMENT.] In the event of the absence of both the recorder and the deputy recorder at the quarter sessions, the mayor is to open and adjourn the sessions, and to respite all recognizances to a future day; but he is not to do any other act as judge of the court. (M. C. s. 106.)

In case of the illness or absence of the mayor, the deputy mayor may discharge this official duty. (See 16 & 17 Vict. ch. 79, ss. 7, 8.)

DEPUTY JUDGE.—Where the recorder of any borough in which there is a court of record for the

trial of civil actions, is the judge of such court, he may, in case of sickness or unavoidable absence, make an appointment of a deputy, being a barrister of not less than five years' standing, to act as judge at the court then next to be held, or then being held, sending a statement of his reason for making such appointment to the secretary of state. (32 & 33 Vict. ch. 23.)

. **CLERK OF THE PEACE.**] The clerk of the peace is appointed by the council, and holds his office during good behaviour. (M. C. s. 103.) Neither he nor his partner, nor any one in his employ, can act as clerk to the borough justices under a penalty of 100*l.* (M. C. s. 102.)

. **FEES OR SALARY.**] The council are to fix the fees payable to the clerk of the peace, subject to the allowance of the secretary of state. (M. C. ss. 124, 125.) The clerk of the peace may, on the recommendation of the council and order of the secretary of state, be paid by salary out of the borough fund in lieu of fees (14 & 15 Vict. ch. 55, s. 9); and the fees to which he would otherwise be entitled will be payable by him to the borough fund. (*Id.* s. 11.) Unless the salary be fixed in the mode prescribed by this Act, an agreement between the clerk of the peace and the council that he should receive a salary out of the borough fund, and that the fees should be paid to that fund, would be illegal. (*Liverpool Corporation v. Wright*, 34 L. T. 28.)

The clerk of the peace is to give at least ten days' public notice (*i. e.*, clear days,) before holding the quarter sessions, and is to summon the jurors seven days at least before such sessions. (M. C. s. 121.)

. **MISCONDUCT.**] In counties, or in any city, borough, or other place having a separate court of quarter sessions, if it appear to any two justices that the clerk of the peace has been guilty of such misconduct other-

wise than in the execution of his office, as in their opinion to render him an unfit or improper person to hold his office, the said justices may exhibit against him to the court of general or quarter sessions a complaint in writing stating the misconduct, and at the same time send a copy to the *custos rotulorum*; and the court, if satisfied upon examination in open court that such clerk has been guilty of the conduct imputed to him, and that the same is "such as to render him an unfit or improper person to hold his office," may suspend or remove him from his office, and a new clerk of the peace shall be appointed, as in cases where a clerk of the peace has misdemeaned himself in the execution of his office. (27 & 28 Vict. ch. 65, s. 2.)

The clerk of the peace may within three months after the decision of the court, appeal to the Lord Chancellor by motion, in a summary way, who may reverse, confirm, or modify the decision of the court. (*Id.* s. 3.)

For misconduct in the execution of his office, the clerk of the peace may be removed by the recorder, by virtue of 1 W. & M. Sess. 1, ch. 21, s. 6, and the Municipal Corporations Act. (*R. v. Hayward*, 31 L. J. (M. C.) 177, and Rowl. 199.)

The sufficiency of the grounds of removal was considered in *R. v. Russell*, 16 L. T. (N. S.) 478, in which the distinction was drawn between contumacious refusal and reasonable remonstrance; and in *R. v. Russell*, 10 L. T. (N. S.) 686, the court of Queen's Bench declined to review the decision of the court of quarter sessions with respect to misdemeanour by the clerk of the peace in the execution of his office.

**JURORS.]** Every (a) burgess (unless exempt or dis-

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(a) The 33 & 34 Vict. ch. 77, to special and common juries, which amends the laws relating exempts the persons described

qualified otherwise than in respect of property under 6 Geo. 4, ch. 50,) is liable to serve on grand juries in the borough, and also upon juries for the trial of all issues joined in any court of quarter sessions and in any court of record for the borough; but no person is to be summoned to serve as a juror at the sessions or court of record oftener than once in one year, (M. C. s. 121,) unless all the persons liable to serve shall have been summoned once during that year. (1 Vict. ch. 78, s. 36.)

Members of the council, the borough justices, the treasurer, and the town-clerk, are *exempt and disqualified* from serving on any jury within the borough, and *exempt* from serving on any jury summoned to serve in the county in which the borough is situate. (M. C. s. 122.) Members of the council may, however, serve as grand jurors at the sessions in boroughs not containing 12,000 inhabitants. (16 & 17 Vict. ch. 79, s. 6.)

in the schedule thereto from serving upon any juries or inquests; and provides that, "save as aforesaid," no man otherwise qualified to serve on such juries or inquests should be exempt, any enactment, charter, &c., to the contrary notwithstanding. (Sec. 9.) Amongst other exemptions are members of the council, justices, town-clerk, and treasurer of a borough, so far as relates to any jury summoned to serve in the county, and burgesses of every borough for which a separate court of quarter sessions shall be holden, so far as relates to the trial of issues joined in any court of general or quarter sessions in the county wherein such borough is situate. As the pro-

visions of 6 Geo. 4, ch. 50, (the jurors' Act,) as to the qualification for jurors, and the regulations for procuring lists of persons liable to serve on juries, did not extend to the jurors or juries in any cities, boroughs, or towns corporate not being counties, or to any cities, boroughs, or towns corporate being counties of themselves, which should possess any jurisdiction, civil or criminal, the new statute cannot, we conceive, have the effect of extending the provisions of that Act to such independent jurisdictions, and the liability of burgesses to serve on the trial of issues at the assizes must, we think, be limited to those burgesses who reside in the county.

## CHAPTER XXVII.

### *Of Borough Courts of Record.*

**JUDGE.]** Before the passing of the Municipal Corporation Act, courts of record for the trial of civil actions were held in many boroughs by charter or custom, which were not regulated by any local Act. In such cases, where the judge or assessor was not a barrister of five years standing, the recorder is to act as sole judge, (M. C. s. 118, and 1 Vict. ch. 78, s. 34,) or he may appoint a barrister of not less than five years standing to be the judge thereof. (6 & 7 Will. 4, ch. 105, s. 9.) Where there is no recorder, then the officer who by charter or custom shall be the judge, is to continue to be and to act as judge; and the council have power to appoint the necessary officer for that purpose. (M. C. s. 118.)

The judge of the court is to hold his office during good behaviour. (M. C. s. 118.)

In the absence of the recorder, he may appoint any barrister, or attorney of five years' practice, to hold the court for all purposes, except the trial of issues in law or in fact. (1 Vict. ch. 78, s. 32.)

**DEPUTY JUDGE.**—Provision is made by 32 & 33 Vict. ch. 23, for the appointment of a deputy to act for the recorder, when he is the judge of this court, and unable to act by reason of sickness or unavoidable absence. (See p. 194, *ante*.)

**SALARY.]** The salary of the recorder or barrister acting as judge is to be paid out of the borough fund,



and to be fixed by a bye-law of the council. (6 & 7 Will. 4, ch. 105, s. 9.)

**WHEN HELD.]** The courts in the boroughs mentioned in the Schedules A. and B. of the Municipal Corporation Act are to be held at least four times in the year, and with no greater interval than four calendar months between any two successive courts. (2 & 3 Vict. ch. 27, s. 2.)

**JURISDICTION.]** Every borough court in which a barrister of five years standing shall act as judge, or assessor, has authority to try actions of assumpsit, covenant, debt, trespass, or trover, where the sum or damages sought to be recovered do not exceed 20*l.*; and also actions of ejectment where the annual rent of the premises does not exceed 20*l.*, and where no fine has been reserved. But no action is to be tried in such courts where the title to land, or to any tithe, toll, market, fair, or other franchise, shall be in question, unless the court had authority to try such question before the Municipal Corporation Act. (M. C. s. 118.)

The jurisdiction of any such court is to extend as far as the boundaries of the borough, (M. C. s. 118; see also 6 & 7 Will. 4, ch. 105, s. 7,) and upon the joint petition of the council and of the quarter sessions for the county, it may be still further extended by the Queen in council. (1 Vict. ch. 78, s. 35.)

**RULES.]** The judge of the court has authority to make, alter, and revoke rules for appointing the times of holding the court, for regulating the forms and manner of proceedings, the process (except that all personal actions must be commenced by writ of summons), the appearance, practice and pleadings in the court, and for settling the fees of attorneys practising therein; but all such rules, or orders altering or re-

voking rules must first be allowed by three of the judges of the superior common law courts. (5 & 6 Will. 4, ch. 76, s. 118; 6 & 7 Will. 4, ch. 105, s. 9; and 2 & 3 Vict. ch. 27, ss. 1, 2, 3.)

**OFFICERS.]** The council are to appoint the officers and servants necessary for carrying on the business, and executing the process of the borough court, including a registrar; except in boroughs where the town-clerk acts as registrar. (M. C. s. 119.)

Any attorney may practise in the borough courts; but no officer of the court can do so, nor his partner or clerk. (M. C. s. 119.)

**FEES.]** The fees payable to the registrar are to be settled by the council, subject to the confirmation of the secretary of state. (M. C. s. 124.)

**REGISTRAR.]** All rules and orders may be made, affidavits may be sworn, and all other matters, except the trial of (a) issues in law or in fact, relating to the business of the court may be done in the absence of the judge, by or before the registrar, or such other person, being a barrister at law or attorney of five years standing, as the recorder shall appoint under his hand and seal. (1 Vict. ch. 78, s. 33.)

**COUNTY COURTS.]** The establishment of county courts has greatly diminished the importance and business of courts of record, and in some boroughs these courts have fallen into disuse, and no officers have been appointed and no such courts holden.

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(a) The 30 & 31 Vict. ch. 142, s. 6, repeals 3 & 4 Will. 4, ch. 42, s. 17, enabling a superior court to direct issues to be tried before a sheriff or a judge of an inferior court of record, where the sum sought to be recovered did not exceed 20*l*.

## CHAPTER XXVIII.

### *Of the Borough Fund, the Borough Rate, and the Watch Rate.*

**BOROUGH FUND.]** The rents and profits of all corporate property, and the dividends and annual proceeds of all monies, dues, chattels, and security belonging to or payable to any body corporate or to any member or officer thereof in his corporate capacity, and every (a) fine or penalty, (M. C. ss. 48, 121, 126,) for offences against the Municipal Corporation Act, (the application of which is not thereby otherwise provided for,) are payable to the treasurer, to be carried by him to the account of "The Borough Fund." (M. C. s. 92.)

**APPLICATION.**—Subject to the payment of any lawful debts due from the corporation before (b) the Municipal Corporation Act and unredeemed, or of so much thereof as the council shall from time to time deem it expedient to redeem, and to the payment of the interest thereof, saving all rights and interests of all persons in or upon the real or personal estate of

(a) Under Jervis's Act, (11 & 12 Vict. ch. 43, s. 31,) penalties under statutes in which there is no special direction as to their application are payable to the treasurer of the county, riding, division, liberty, city, borough, or place, for which the justices acted. The words "borough or place" mean a place having a grant of quarter sessions; and in boroughs having a commission of the peace but no such grant, unappropriated penalties are payable to the treasurer of the county. (See

*E. v. Dale*, 17 J.P. 68, and *Winn v. Mossman*, 33 J. P. 743). In boroughs, not having either a commission of the peace, nor a grant of quarter sessions, such penalties are also payable to the county. (*Mayor of Reigate v. Hunt*, 32, J.P. 342.)

(b) Any money borrowed and applied in discharging any pre-existing debt is to be deemed a debt contracted before the Municipal Corporation Act. (1 Vict. ch. 78, s. 28, and 6 & 7 Will. 4, ch. 104, s. 1.)

the corporation by virtue of any legal proceedings or mortgage, the borough fund is to be applied in payment of the (c) salaries of the mayor, the recorder, the police magistrate, if any, the town clerk, and the treasurer, and of every other officer whom the council may appoint, the expenses connected with the borough elections, (such as the preparing and printing burgees lists, ward lists, notices, and the like,) the expenses of the prosecution, maintenance, and punishment of offenders, the expenses of maintaining the borough gaol, and corporate buildings, and of the maintenance, &c. of borough prisoners sent to the county gaol, (see 5 & 6 Vict. ch. 98, s. 18,) the payment of constables, and of all other expenses not in the Act otherwise provided for, which shall be necessarily (d) incurred in carrying into effect the provisions of the Act. (M. C. s. 92.)

SURPLUS.] In case the borough fund shall be more than sufficient for the purposes above mentioned, (or for any other purposes authorized by any general or local Acts,) the surplus is to be applied, under the direction of the council, for the public (e) benefit of the inhabitants and the improvement of the borough. (M. C. s. 92.)

(c) An action will not lie by a salaried officer against the corporation for the arrears of his salary—his remedy will be by *mandamus*. (*Addison v. Preston*, 21 L. J. C. P. 146.)

(d) The fees of the clerk to the justices for the prosecution of offenders, at the instance of police constables, are payable out of the borough fund; (*R. v. Gloucester*, 5 Q. B. 862;) so also is the cost of the repairs of a pew in the church occupied

by the corporation. (*R. v. Warwick*, 15 L. J. Q. B. 306.) Local Acts also frequently render the borough fund liable for the expense incurred in carrying out their provisions.

(e) These words give a large discretion in case of a surplus, and must be honestly and faithfully exercised. (See *Attorney-General v. Norwich*, 2 M. & C. 425, and *same v. Wigan*, 1 Kay, 268, see also p. 141, *ante*.)

**BOROUGH RATE.]** In case the borough fund is not sufficient to meet the sums charged upon it, the council are required from time to time, to estimate, as correctly as may be, what amount in addition to such fund, will be sufficient for payment of the expenses to be incurred in carrying into effect the provisions of the Act, and may order a borough rate in the nature of a county rate to be made within the borough (*b*). (M. C. s. 92.)

**ESTIMATE.]** In making an estimate of the expenses to be provided for by the borough rate, it is impossible at all times to calculate with perfect accuracy the amount which will be actually expended, either in the aggregate or in the detailed items, or, in some cases, to foresee the requirements of the period for which the estimate is made. A parliamentary election, a riot, a Fenian conspiracy, or other source of expenditure may unexpectedly occur.

The sufficiency of the estimate for a rate (poor, borough, and general district,) has been the subject of consideration in the three following cases:—

1. In *R. v. Reed*, 13 J. P. 314, (with reference to the poor's rate,) Patteson, J., in delivering the judgment of the court, observed, that "although the rate is founded on an estimate, it is not so exclusively appropriated to the expenses included therein, but that it may be lawfully applied to any unforeseen debt not included therein."

2. In *Jones v. Johnson*, 15 J. P. 21, (with reference to a borough rate,) Pollock, C. B., said that "it would be impossible sometimes to provide for everything prospectively in the estimate on which the borough rate was founded, and it would be unjust to hold a rate to be bad, because, to some extent, it was retrospective.

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(*b*) See 17 & 18 Vict. ch. 71, not within the Municipal Corporation Act.  
as to borough rates in boroughs

All that is required of the town council is, that the estimate shall be as nearly correct as possible."

3. In *R. v. Worksop Local Board*, 29 J. P. 759, (with reference to a general district rate,) the question was considered, whether the estimate required by the Public Health Act was a condition precedent to the authority to make a rate, or whether the enactment was directory only, not affecting the validity of the rate; but on account of the importance of the decision either way, the court declined to give any opinion upon it, the case being decided on another point, the invalidity of the rate from not having the Seal of the Board. With respect to the objection made to the sufficiency of the estimate, the court observed, that some of the items were open to objection, as combining incongruous items in one lump sum, in a manner inconsistent with the requirements of the Act, (as "election expenses and cleansing sewers," and "law charges and surveyor's instruments,") whilst in others (as "rents, rates, and collector's poundage," or "watering public streets and expenses of fire engines,") the objects had that degree of affinity to each other which would make it not improper to include them in the same class, being a substantial, if not a literal compliance with the Act.

These cases would seem to show that the estimate requires a considerable amount of care—that incongruous items should not be combined in one sum—that it should exhibit in a fair, honest, and intelligible form the requirements of the period, so far as they can be ascertained by the deliberate exercise of judgment and discretion, and that the court will not be astute in the detection of errors, but be disposed, if possible, to uphold the validity of a rate founded upon an estimate so prepared.

A borough rate should not be retrospective. (*Woods v. Reed*, 2 M. & W. 777; *Att. Gen. v. Lichfield*, 17 L. J. Ch. 472; and *Fernley v. Worthington*, 1 M. & G. 491;) except as to bygone expenses coming within the principle of *Jones v. Johnson*, p. 202, *ante*.

ORDERING RATES.] For the purpose of ordering "a borough rate in the nature of a county rate," it was provided by 5 & 6 Will. 4, ch. 76, s. 92, that the council shall have all the powers which justices of counties in quarter sessions have under 55 Geo. 3, ch. 51, "or as near thereto as the nature of the case will admit." The latter statute, and several other statutes, were (a) repealed by 15 & 16 Vict. ch. 81, except so far as they repeal any other Act, "or provide for or relate to any matter or thing other than the county rate."

DIVIDED PARISHES.] In those parishes, townships,

(a) A question has arisen as to the effect of this repeal, on which counsel have given conflicting opinions. Are councils still competent to exercise the powers of the repealed statute, or are the powers given to justices of counties by the repealing statute to be considered as vested in councils by implication and substitution, as appears to be the opinion of Mr. Rawlinson, not only from his observations, but from his having omitted in the later editions of his work on Municipal Corporations the Act of 55 Geo. 3, c. 51, and substituted that of 15 & 16 Vict. c. 81. The arguments on this subject may be thus summarized:—On the one hand, it is contended that the repeal of the 55 Geo. 3, ch. 51, was partial—that it extended only to matters relating to the county

rate—that a borough rate is not a county rate, nor comprised in the definition of a county rate in the new statute (s. 51)—that had it been intended to apply to borough rates, the 6 & 7 Will. 4, ch. 104, s. 5, the 1 Vict. ch. 81, and the whole (not a part only) of the 12 & 13 Vict. ch. 65, would have been repealed—that the 17 & 18 Vict. ch. 71, giving the powers of the 55 Geo. 3, ch. 51, to justices of boroughs not within the Municipal Corporation Acts, shows that such statute is still in force as to borough rates—and that the provisions of the 15 & 16 Vict. ch. 81, are inapplicable to boroughs. On the other hand, it is contended that the 55 Geo. 3, ch. 51, was wholly and not partially repealed, inasmuch as the 15 & 16 Vict. ch. 81, repealed

or extra-parochial places which lie partly within and partly without the borough, overseers appointed by the council are empowered to levy a rate in the same

every matter relating to the county rate, and that such Act did not provide for or relate to any matter or thing other than the county rate—that the saving exception was not intended to apply to borough rates, but to any provisions which might be contained in any of the repealed statutes not connected with rates—that the object of the legislature, as shown by s. 92 of the Municipal Act, and the subsequent Act of 1 Vict. ch. 81, was to assimilate the law with respect to the county and borough rate, as far as the nature of the case would admit—that the 17 & 18 Vict. ch. 71, shows that the powers of the 55 Geo. 3, ch. 51, were considered as having ceased from its having been found necessary to revive them by an Act of the legislature—that the fact of the powers of that Act having been conferred on the justices of certain boroughs by express legislation, affords no argument in favour of their being still vested in the councils of other boroughs, without any such legislation—that the *argumentum ab inconvenienti* is met by the consideration that the powers of the 15 & 16 Vict. ch. 81, are to be exercised by the council so far only as the nature of the case will admit—and that it would be an anomaly, for which no case or authority can be cited, for a public body to retain the powers of a repealed statute without a reservation of their

rights, or their subsequent re-enactment. Having given thus briefly the arguments in support of the two views of the statutes which have come under our notice, we may observe that it may be reasonably doubted whether the Court of Queen's Bench would sanction the doctrine that the powers of an incorporated Act (say, for instance, "The Towns Improvement Clauses Act" partially incorporated in the "Local Government Act,") can continue in force after its repeal, for the purposes of the incorporating Act, without legislative revival.

We have not, however, adverted to a third view which may be taken, and which may possibly be the correct one—that the powers of the 55 Geo. 3, ch. 51, have been taken away, but that those given to justices of counties by the 15 & 16 Vict. ch. 81, have not been substituted, from the absence of any enactment to that effect. If this be the case, the councils might, it is submitted, still retain the power of ordering rates under the 92nd section of the 5 & 6 Will. 4, ch. 76,—of issuing warrants to levy rates under 6 & 7 Will. 4, ch. 104, s. 5,—of ordering rates to be paid out the poor rates, or raised by a separate rate under 1 Vict. ch. 81, and acting in divided parishes under 8 & 9 Vict. ch. 110, and 12 & 13 Vict. ch. 65,—and for the purpose of ordering rates, be possessed of all such powers and autho-



manner as a general rate levied for a whole parish, and to be called a district rate, (8 & 9 Vict. ch. 110, s. 1. See *Fernley v. Worthington*, 1 M. & G. 491, and *Cobb v. Allan*, 16 L. J. Q. B. 397.)

A district rate (a), or a separate watch rate laid under 8 & 9 Vict. ch. 110, is required to be allowed by two justices acting for the borough, and to be published in the same manner as a poor rate; (*Id.* s. 2;) but no such rate shall exceed twopence in the pound of the annual value of the property rateable thereto beyond the rate in the pound at which the council shall have computed the general borough or watch rate charged by them, and any surplus is to be paid to the treasurer of the borough, and go in part of the next rate (b). (8 & 9 Vict. ch. 110, s. 4.)

The council or a committee may excuse persons from the payment of any district rate or separate rate made for raising a watch rate, on account of poverty. (*Id.* s. 5.)

APPEAL.] An appeal is given to the borough sessions against the borough rate, who may hear and determine the same as in the case of an appeal against any county rate; (M. C. s. 92;) but it was held in *R. v. Bath*, 9 A. & E. 870, that the right of appeal (i. e., as under the 55 Geo. 3, ch. 51, s. 14,) is not given to individuals, except in

rities as are necessary for the due performance of a statutory obligation.

Our observations as to an appeal (p. 206) must be read with reference to the conflicting opinions to which we have referred. It will, however, be seen, on reference to 5 & 6 Will. 4, ch. 76, s. 92, that the appeal in the case of a borough rate is given "as in the case of an appeal against any county rate," without referring to any particular statute.

(a) Where rates are laid for divided parishes, the several provisions of the 8 & 9 Vict. ch. 110, and 12 & 13 Vict. ch. 65, should be referred to. A *mandamus* will not be granted for nonpayment of rates, there being a remedy by distress. (*R. v. Hunslet*, 33 L. T. 104, and p. 143, *ante.*)

(b) This statute was passed subsequently to the decision in *R. v. New Windsor*, 7 Q. B. 908, and remedied the inconvenience thereby occasioned.

case of the omission of parishes which ought to be included in the rate, or of the unequal apportionment of the rate among the different parishes. The statute of 55 Geo. 3 has been since repealed by 15 & 16 Vict. ch. 81, and the 17th and 22nd sections of this Act, state what persons, and on what grounds an appeal will lie in the case of a county rate.

Notice of appeal is necessary, and it must be given to the town-clerk, and the notice must state that the party is aggrieved. (*R. v. Carmarthen*, 7 A. & E. 756. *R. v. Bond*, 6 A. & E. 905.)

It was held in *R. v. Westmoreland*, 10 B. & C. 226, that it was not necessary to specify the grounds of appeal the 55 Geo. 3, ch. 51, not requiring it, but under 15 & 16 Vict. ch. 81, ss. 17, 22, notice of the cause and matter of the appeal is necessary in an appeal against a county rate, and therefore it is now also required, we conceive, in an appeal against a borough rate.

An appeal is also given against any district rate, or separate watch rate; (8 & 9 Vict. ch. 110, s. 3, and 12 & 13 Vict. ch. 65, s. 3;) and as this right of appeal is given, "as in the case of an appeal against any rate made for the relief of the poor," it is not limited it would seem, as in the case of an appeal against the general borough rate.

WATCH RATE.] The council of any borough named in the Schedule to the Municipal Corporation Act, may levy a watch rate upon the occupiers of all hereditaments which shall be watched by day and by night, and which by any (a) order of the council shall be declared liable to such watch rate; and such rate is to be made

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(a) There is nothing in the subsequent Act of 3 & 4 Vict. ch. 28, to interfere with this power of ordering the whole of the borough to be watched, and to be assessed to the watch rate. (*Great Western Railway Company v. Maidenhead*, 31 L. J. M. C. 113.)

upon an estimate of the net annual value of the property (on the principle of the poor's rates) either by one rate made yearly, or by two or more rates made half-yearly or otherwise. (2 & 3 Vict. ch. 28, s. 1, explained by 3 & 4 Vict. ch. 28, s. 1.)

The amount of the watch rate is not to exceed eightpence in the pound. (See 22 & 23 Vict. ch. 32, s. 6, amending 2 & 3 Vict. ch. 28, s. 1, and 3 & 4 Vict. ch. 28, s. 2.)

The same powers are given with respect to raising the watch rate in parishes partly within and partly without the borough, as in the case of the borough rates; but the overseers of a parish so situated are not to pay the watch-rate out of the poor rate, but are to make a separate rate for the purpose upon such parts of the parish as are liable thereto. (8 & 9 Vict. ch. 110, ss. 1, 6.)

BRIDGES.] Every bridge, or such part of it, as is situate within the limits of any borough, is to be repaired, improved, or rebuilt by the council, at the expense of the borough fund. (See 13 & 14 Vict. ch. 64.)

ALTERNATIVE POWERS OF COUNCIL.] In all cases where a borough rate or watch rate may be made and levied in any borough, under 5 & 6 Will. 4, ch. 76, as amended by 1 Vict. ch. 81, s. 1, the council may order the overseers or such other persons as by law may make a poor rate for any parish or place within the borough, to pay the amount of such portion of the rate for which such parish or place shall be liable, out of the poor rate, or instead of so doing may order them to make and collect a certain pound rate upon the occupiers of all rateable property for the amount. (1 Vict. ch. 81, s. 1.) The order need not be made in public. (*Jones v. Johnson*, 15 J. P. 21.)

## CHAPTER XXIX.

### *Of Free Public Libraries.*

**OBSERVATIONS.]** The establishment and management of free libraries are regulated by "The Public Libraries Act, 1855," and the "Public Libraries Amendment Act, 1866," and so much of the provisions of these Acts will be given as apply to Municipal Boroughs. It should be observed that it is expressly provided by the 10th section of the latter Act, that wherever a public museum or library has been established under any Act relating to public museums or libraries, or shall hereafter be established under either of the above Acts, a public library, or museum, (as the case may be,) may at any time be established in connexion therewith, without any further proceedings being taken under these Acts.

**REPEAL OF FORMER ACTS.]** By the Act of 18 & 19 Vict. ch. 70, ("The Public Libraries Act, 1855,") The Public Libraries Act, 1850, is repealed; but all libraries and museums established under that Act or the Act thereby repealed are to be considered as having been established under this Act, and the council of any borough which may have adopted the Act of 1850, or established a museum under the Act thereby repealed, have and may use and exercise all the benefits, privileges, and powers given by this Act; and all monies which have been borrowed by virtue of the repealed Acts, and still remaining unpaid, and the interest thereof, are charged on the borough rates, or a rate to be assessed and recovered in the like manner as a borough rate to be made by virtue of this Act. (18 & 19 Vict. ch. 70, s. 1.)

**ADOPTION BY TOWN COUNCILS.]** The mayor of any

borough (a), (see 29 & 30 Vict. ch. 114, s. 6,) shall, on the request of the town council, or on the request in writing of ten ratepayers residing in the borough, (29 & 30 Vict. ch. 114, s. 3,) convene a public meeting of the burgesses, in order to determine whether this Act shall be adopted for the municipal borough, and ten days' notice at least (*i.e.* clear days) of the time, place, and object of the meeting shall be given by affixing the same on or near the door of every church and chapel within the borough, and also by advertising the same in one or more of the newspapers published or circulated within the borough, seven days at least before the day appointed for the meeting; and if at such meeting more than one-half of the persons present at the meeting (see 29 & 30 Vict. ch. 114, s. 5,) shall determine that this Act ought to be adopted (b) for the borough, the same shall thenceforth take effect and come into operation in such borough, and shall be carried into execution in accordance with the laws for the time being in force relating to the Municipal Corporation of such borough, with a proviso that the mayor, or, in his absence, the chairman of the meeting, shall cause a minute to be made of the resolutions of the meeting, and shall sign the same; and the resolutions so signed shall be conclusive evidence that the meeting was duly convened, and the vote thereat duly taken, and that the minute contains a true account of the proceedings thereat. (18 & 19 Vict. ch. 70, s. 4.)

If the meeting shall determine against the adoption of the Act, no meeting for a similar purpose can be

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(a) The 24th section of the Act of 1855, contains special provisions as to the city of London.

(b) The 4th section of 29 &

30 Vict. ch. 114, enables adjoining parishes to unite with a borough adopting the Act, with such consent as therein mentioned.

held for one year from the time of holding the previous meeting. (29 & 30 Vict. ch. 114, s. 8.)

**EXPENSES.]** The expenses incurred in calling and holding the meeting, whether the Act shall be adopted or not, and of carrying the Act into execution in any municipal borough, may be paid out of the borough rate, or out of a rate to be made and recovered in like manner as a borough rate; with a proviso that the Act shall not interfere with 28 & 29 Vict. ch. 108, so far as it relates to a rate for Oxford. (29 & 30 Vict. ch. 114, s. 2.)

**ACCOUNTS.]** Distinct accounts shall be kept of the receipts, payments, and liabilities of the council under the Act. (18 & 19 Vict. ch. 70, s. 5.)

**AMOUNT OF RATE.]** The amount paid in any one year for the purposes of this Act shall not exceed the sum of one penny in the pound upon the (a) annual value of the property in the borough rateable to a borough rate. (29 & 30 Vict. ch. 114, ss. 1, 2, repealing s. 15 of Act, 1855, as to municipal boroughs.)

**BORROWING POWER.]** The council may, with the approval of Her Majesty's Treasury, borrow at interest on the security of a mortgage or bond of the borough fund, or of the rates levied in pursuance of this Act, such money as may be required; and the commissioners for carrying into execution 9 & 10 Vict. ch. 80, may lend any such money, (18 & 19 Vict. ch. 70, s. 16,) and the provisions of "The Companies Clauses Consolidation Act, 1845," with respect to the borrowing of money, are incorporated with this Act. (18 & 19 Vict. ch. 70, s. 17.)

**APPROPRIATION OF LANDS.]** The council may, with the approval of the Treasury, appropriate for the pur-

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(a) The words "annual value" rateable value, and not the gross were in *Baker v. March*, 24 L. estimated rental.  
T. (O. S.) 72, held to mean the

poses of this Act any lands vested in the corporation; and may, with such approval, purchase or rent any lands or suitable buildings; and may upon lands so appropriated, purchased, or rented, erect any building suitable for public libraries or museums, or both, or for schools for science or art, and may apply, take down, alter, and extend any buildings for such purposes, and rebuild, repair, and improve the same respectively, and fit up, furnish, and supply the same respectively with all requisite furniture, fittings, and conveniences; (*Id.* s. 18;) and "The Lands Clauses Consolidation Act, 1845," shall be incorporated with this Act; but the council shall not purchase or take any lands otherwise than by agreement. (*Id.* s. 19.)

SALE OF LANDS.] The council may, with the like approval, sell any lands vested in the corporation, for the purposes of this Act, or exchange the same for any lands better adapted for the purpose; and the monies to arise from such sale, or to be received for equality of exchange, or a sufficient part thereof, shall be applied towards the purchase of other lands better adapted for such purposes. (*Id.* s. 20.)

GIFTS OF LAND OR MONEY.] Gifts and assurances of land of any tenure, whether by deed, will, or codicil, for the purpose only of a public park, school-house, for an elementary school, or public museum, (defined by s. 3,) and all bequests of personal estate to be applied in the purchase of land for any of such purposes are valid, notwithstanding the statutes of mortmain; (34 & 35 Vict. ch. 13, s. 4.) every such will or codicil, and every deed made otherwise than for full and valuable consideration, to be made twelve calendar months at least before the death of the testator or grantor, and to be enrolled in the books of the Charity Commissioners within six calendar months after the time when the will, codicil, or deed, shall

come into operation. (*Id.* s. 5.) The quantity of land not to be more than 20 acres for any one public park—than 2 acres for any one public museum—or than one acre for any one schoolhouse. (*Id.* s. 6.)

LOCAL BOARDS.] Power is given to local boards of health by 34 & 35 Vict. ch. 71, to adopt the Libraries Act, except where the whole or any part of the district is within any municipal borough, or within the jurisdiction of commissioners under any Improvement Act.

MANAGEMENT AND POWERS.] The general management, regulation, and control of the libraries and museums, schools for science and art, shall be, as to any borough, vested in and exercised by the council, or such committee as the council may from time to time appoint, the members whereof need not be members of the council, who may from time to time purchase and provide the necessary fuel, lighting, and other similar matters, books, newspapers, maps, and specimens of art and science, for the use of the library or museum, or school, and cause the same to be bound or repaired when necessary, and appoint salaried officers and servants, and dismiss the same, and make rules and regulations for the safety and use of the libraries and museums, and schools, and for the admission of the public. (18 & 19 Vict. ch. 70, s. 21.)

PROPERTY OF COUNCIL.] The lands and buildings so to be appropriated, purchased, or rented, and all other real and personal property whatever presented to or purchased for any library or museum established under this Act, or school, shall be vested, in the case of a borough, in the mayor, aldermen, and burgesses. (*Id.* s. 22.)

NO ADMISSION FEES.] The admission to all libraries and museums established under the Act shall be open to the public free of all charge. (*Id.* s. 25.)



## CHAPTER XXX.

### *Of the Public House Closing Acts.*

**PUBLIC HOUSE CLOSING ACTS.]** The Council have power, at a meeting convened in the mode prescribed by "The Public House Closing Act, 1864," (27 & 28 Vict. ch. 64.) to adopt that Act, as amended by the Act of 1865. (28 and 29 Vict. ch. 77.) The meeting must be called by the mayor, on the requisition of not less than twenty ratepayers, and one month's notice be given as required for a meeting convened for the adoption of the Local Government Act.

**RESOLUTION OF MAJORITY.]** The resolution of a majority of the members of the Council who shall be present at the meeting will be sufficient for the adoption of the Act, although it was at one time considered, in consequence of the terms of the 9th section of the Act of 1864, that there must be a majority of two-thirds of the members present, as required for the adoption of the Local Government Act. The question was, however, considered in the case of the Borough of Bradford, and submitted for the opinion of the secretary of state, who, in his reply to the mayor of that borough, dated 24th December, 1864, stated that a majority was all that the Act required, and that there was not sufficient doubt upon the point to render it necessary to submit it to the law officers of the crown. This opinion has since been acted upon without controversy or dispute.

EFFECT OF ADOPTION.] The consequence of the adoption of the Act is to limit the hours during which public houses and refreshment houses may be kept open, and to render it penal (except in certain specified cases) to sell any liquor therein between one and four o'clock in the morning. It is however provided that nothing contained in the Acts shall apply to the sale at a railway station, between one and four, A. M., of excisable liquors or refreshments to persons arriving at or departing from such station by railroad.

A licence may, however, be obtained from the local authority, (the persons constituting the local authority varying in different boroughs,) for an extension of time during certain hours, and on any special occasions; and justices, on the grant or renewal of any licence may exempt any house from the provisions of the Act as to the prohibited hours from two o'clock to four o'clock in the morning, on the production of evidence that it is desirable so to do, for the accommodation of any considerable number of persons attending any public market, or following any lawful trade or calling, with power for the justices to withdraw, alter, or amend the licences in this respect.

We do not think it necessary to refer with more particularity to the provisions of the Acts, the enforcement of which will mainly depend on the vigilance of the police, acting under the instructions of the magistrates.

## CHAPTER XXXI.

### *Of the Police Superannuation Fund.*

**SUPERANNUATION FUND—HOW FORMED.]** The 22 & 23 Vict. ch. 32, provides for the establishment of a superannuation fund for the police force, by the deduction from the pay of every constable of not exceeding 2*l.* 10*s.* per cent., (s. 8,) and the money so deducted, and also the money accruing from stoppages of pay during sickness, or from fines on constables for misconduct, and from any portions of the fines imposed by justices on drunken persons, or for assaults on police constables, and from moieties of fines awarded to constables when informers, as shall be directed by any justice to be paid for the benefit of this fund, and from money arising from the sale of worn or cast-off clothing, are to be invested at interest by the council as an accumulating fund; (s. 8;) and a moiety of any penalty imposed on publicans or beerhouse keepers, under 18 & 19 Vict. ch. 118, may be directed by the justices imposing the penalty, to be paid to this fund. (22 & 23 Vict. ch. 32, s. 14.)

The fees payable to constables for the performance of any act done in the execution of their duty are to be received in such manner as the watch committee, subject to the approbation of the Council, may direct, and paid over to this fund. (S. 11).

**GUARANTEE.]** The Council shall guarantee the security of the fund, and make good out of the borough fund any deficiency arising from the default of the treasurer or other person entrusted with the custody

thereof; (*Id.* s. 8;) and if the fund shall be insufficient the amount of the insufficiency must be made good from the borough fund or borough rate. (22 & 23 Vict. ch. 32, s. 12.)

ACCOUNTS.] The fund is to vest in the treasurer, who is required to keep a separate account of all money received and paid, and for what matters so received and paid. (*Id.* s. 13.)

PRINCIPLE OF COMPUTATION.] The watch committee, with the approbation of the council, may order any constables who may be worn out, or disabled from infirmity of mind or body, to be superannuated, and to receive a yearly allowance, not exceeding the following rate, (*i. e.*), if the constable has served with diligence and fidelity for fifteen and less than twenty years, not more than half his pay—if for twenty years or upwards, not more than two-thirds of his pay. But if the constable is under sixty years of age no allowance is to be granted without the certificate of the chief or head constable that such constable is incapable, from infirmity of mind or body, to discharge the duties of his office. (*Hobson v. Kingston-upon-Hull*, 24 L. J. Q. B. 251.) If, however, a constable be disabled from any wound or injury received in the *actual execution* of his duty, the committee may grant any allowance not being more than the whole of his pay. (*Id.* s. 9.)

Nothing contained in the Act shall be construed to entitle any constable or his widow absolutely to any allowance, or to prevent his dismissal without any allowance. (*Id.* s. 9, and 28 & 29 Vict. ch. 35, s. 5.)

The committee, with the approbation of the council, and upon the recommendation of the chief or head constable, and upon his certifying that any constable who has not served fifteen years is incapable, from

infirmity of mind or body, to discharge his duty, may order such constable to receive such sum in gross as they may think fit, as a gratuity upon his retirement. (22 & 23 Vict. ch. 32, s. 10.)

The committee may also, with the like approbation of the council, and recommendation of the chief or head constable, grant a gratuity not exceeding the amount of one year's pay to the widow of any constable who shall have died in the service, and who shall have contributed to the fund for not less than three years; (*Id.* s. 20;) and where the Acts authorize a grant of a superannuation allowance or a gratuity, the committee may, in lieu thereof, grant an annual allowance for a limited time, determinable on the death of the annuitant before the expiration of the time fixed; but if granted to a constable who has served fifteen years or more, it must be granted on the same scale as if it were a permanent retiring allowance; and if, at the expiration of the limited time, the annuitant is incapable, from infirmity of mind or body, to discharge the duties of a constable, or has attained the age of sixty; the allowance granted for a limited time only is to continue during the remainder of his life. (28 & 29 Vict. ch. 35, s. 3.) Where any person to whom an annual allowance for a limited period has been granted is re-appointed to the office of constable, the time during which he was in receipt of the allowance is, for the purpose of any subsequent superannuation, to be reckoned as service in the force. (*Id.* s. 3.) Half only of the period of service prior to 13th August 1859, (when the Act received the royal assent) is to be reckoned in determining upon allowance in any borough where no superannuation fund had been previously established. (22 & 23 Vict. ch. 32, s. 16.)

[CHIEF CONSTABLE.] The chief or head constable

of a borough is to be deemed a constable within the meaning of the Act of 1859, and in the case of such constable or his widow, the resolution of the watch committee equivalent to the recommendation required from him as to other constables; but there are various special provisions applicable to the computation of his period of service. (28 & 29 Vict. ch. 35, s. 4.)

GOOD SERVICE REWARDS.] The watch committee, subject to the approbation of the Council, may, upon the recommendation of the superintendent, grant to any constable, out of the borough fund, a gratuity in money, not exceeding three pounds, as a reward for any meritorious act done in the execution of his duty. (22 & 23 Vict. ch. 32, s. 24.)

DISMISSAL.] The watch committee may suspend any constable whom they shall think remiss or negligent in the discharge of his duty, or otherwise unfit for the same; and may fine any such constable not exceeding one week's pay, and reduce from a superior to an inferior rank, in addition to any other punishment to which the constable may be liable. (*Id.* s. 26.)

GENERAL PROVISIONS.] There are certain other provisions in the Act applicable to the case of the consolidation of the county and borough police force; (22 & 23 Vict. ch. 32, s. 17;) the promotion from one force to another; (*Id.* s. 19;) the exemption of any borough in which a superannuation fund has been already established under a local Act; (*Id.* s. 21;) the reservation of rights under repealed Acts; (*Id.* s. 15;) the offence of embezzlement by constables; (*Id.* s. 25;) and special provisions as to the watchmen's fund at Brighton. (*Id.* s. 23; and 28 & 29 Vict. ch. 35, s. 9.)

## CHAPTER XXXII.

### *Of Pauper Lunatic Asylums.*

OBSERVATIONS.] The provisions of the statutes relating to the care and maintenance of lunatics, and the erection of lunatic county and borough asylums are so numerous as to render it impossible to do more in this (a) work than to give a general outline of the principal powers and duties of the council. The Act of 16 & 17 Vict. ch. 97, which consolidated the laws for the maintenance and care of pauper lunatics, has been since amended by 18 & 19 Vict. ch. 105; 19 & 20 Vict. ch. 87; 25 & 26 Vict. ch. 111; 26 & 27 Vict. ch. 110; and 28 & 29 Vict. ch. 80.

COMPULSORY LEGISLATION.] The first Act of a compulsory character with respect to the erection of county or borough asylums was the 8 & 9 Vict. ch. 126, which rendered it incumbent on the justices of counties or boroughs, (or on councils of boroughs on their giving notice under sect. 82 of their intention to take upon themselves the powers of the Act,) to provide asylums for pauper lunatics. The Consolidation Act of 16 & 17 Vict. ch. 97, (which repealed the 8 & 9 Vict. ch. 126,) also made it (b) compulsory on the justices of any borough not having an asylum, (except boroughs in which, at the passing of the 8 & 9 Vict. ch. 126, there were not six justices besides a recorder, and which last-mentioned boroughs were under sect. 9 to be annexed for the purposes of the Act to counties in which they

(a) In "The Lunacy Acts," by D. P. Fry, Esq., all the statutes will be found, with copious notes and a good index.

(b) The secretary of state was empowered (see 10th, 29th, and 30th sections) after the expira-

tion of one year to annex any borough failing to carry out the provisions of the Act to the adjoining county, or to require the borough to provide a sufficient asylum, or improve or enlarge any existing asylum.

were situate,) to provide an asylum or to contract for the reception of the borough lunatics (*c*) into the asylums of other boroughs or counties. (Fry, 29.)

The justices may, under the Act of 1853, either erect a new asylum, or enter into a contract for uniting with some other county or borough, (16 & 17 Vict. ch. 97, s. 3,) or enlarge existing asylums, (s. 30,) and purchase or take a lease of lands; (ss. 31, 32, 33;) and every committee of visitors may, under sect. 42, contract with the committee of visitors of any asylum, or with the subscribers to any hospital, or the proprietor of any licensed house, for the reception of the whole or a portion of the pauper lunatics of their county or borough for any period not exceeding five years, (renewable, see 18 & 19 Vict. ch. 105, s. 10,) determinable by notice from the secretary of state. (16 & 17 Vict. ch. 97, s. 42.) Any money payable for such reception beyond the weekly sums for maintenance, &c., (see s. 54, *post*;) to be paid by the county or borough out of any monies in the hands of the treasurer of the county (*d*) applicable for repairs or other ordinary expenses of the asylum; (*Id.* s. 42;) and any such hospital or licensed house to be subject to the visitation of any of the members of the committee so contracting. (*Id.*)

POWERS OF COUNCIL.] It is provided by the 129th section, that the council of every borough which should within six months after the passing of the Act by writing under their common seal give notice to a secretary of state of their intention to take upon themselves the duties, powers, and authorities thereby conferred on the justices, should be subject to, and have and exercise

(*c*) As to persons receiving a lunatic for profit into an unlicensed house, see 8 & 9 Vict. ch. 100, s. 90, and Fry, 287.

(*d*) The words "or borough"

are omitted, no doubt, from inadvertence; but the context seems sufficient to justify a payment by the treasurer of the borough.



all the duties, powers, and authorities for carrying the Act into execution thereby conferred on the justices of such borough, or on any committee of visitors, and that all matters required thereby to be done at any quarter sessions, or at any meeting of justices, might thenceforth be done at any meeting of the council, and that all notices thereby required to be given to or by the clerk of the peace might thenceforth be given to or by the town clerk. (16 & 17 Vict. ch. 97, s. 129, and 18 & 19 Vict. ch. 105, s. 6.)

Whenever the resolution or other act of the quarter sessions, or of a meeting of justices, or the committee of visitors is referred to in this chapter, it must be borne in mind that in boroughs where the council shall have taken upon themselves the powers of the Lunacy Acts, a meeting of the council of such boroughs must be understood as having the authority to pass such resolution, or do such act.

EXPENSES.] The money required for defraying the expenses of the Lunatic Asylums Acts may be paid out of rates to be levied for the purpose, or if the council think fit, out of the borough fund; (16 & 17 Vict. ch. 97, s. 46;) with power to borrow at interest all or any of the monies required on mortgage of the rates, repaying the same by annual instalments within not exceeding (e) 30 years. (*Id.* s. 47 to 52.)

COMMITTEE.] The council of any borough adopting the powers of the Act, may confer upon any committee appointed by them, (not being less than seven in any borough having an asylum for its own use, s. 22), such of the powers and authorities conferred upon any committee of visitors to be appointed under the Act,

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(e) In local Acts an extended period has been sometimes granted. In the case of the Borough Asylum for Leicester, the period of repayment is not to exceed forty years from the opening of the building.

as to such council shall seem fit. (16 & 17 Vict. ch. 97, s. 130; and 18 & 19 Vict. ch. 105, ss. 6, 7.) The powers of any committee of visitors, and of the members of such committee, are to (f) continue until the first meeting of the committee by which such first-mentioned committee is to be succeeded; and in case of neglect in any year to appoint a committee, then the committee lastly before appointed, is to be the committee. (*Id.* s. 27.)

Meetings of the committee of visitors are to be summoned by their clerk, whenever required, in writing by the chairman, or two of the visitors, or by the superintendent of the asylum; and the chairman may convene a meeting at any time by notice in writing to each visitor of the time and place of meeting, such notice to be delivered, left, or transmitted by the clerk or chairman seven days at least before the time appointed for the meeting. (16 & 17 Vict. ch. 97, s. 25.) The committee of visitors to elect a chairman, and in case of his absence, another member of the committee may be chosen to preside; three members to be a quorum, except for adjournments, which may be made by less than three. Every question is to be decided by a majority of votes, and the chairman (whether permanent or temporary) is to have a vote, and in case of an equality of votes, a casting vote. (*Id.* s. 24.)

**ORDERS FOR REPAIRS, ETC.]** The committee of visitors may order all ordinary repairs necessary for the asylum, and also any additions, alterations, or improve-

(f) Where the committee consists of members of the council of a borough, no persons who go out of office or cease to be qualified as such members, can, we conceive, continue to act as members of the committee of

visitors. It would be inconsistent with the principle of the Municipal Corporation Act for persons who have ceased to be aldermen or councillors to have any control over the borough expenditure.

ments, not exceeding 400*l.* in any one year; but no order for repairs, additions, alterations, or improvements, or for the payment of money for the expenses thereof exceeding 100*l.* is to be made, unless notice of the meeting and the intention to determine the question of the expenditure in manner provided by the Act with respect to meetings of the visitors shall have been given, nor unless three visitors sign the order. Any expenditure otherwise than for ordinary repairs is to be reported to the next quarter sessions. (*Id.* s. 38.)

APPROVAL OF CONTRACTS.] All contracts for receiving the pauper lunatics of any county or borough, plans for building, enlarging or improving any asylum, or for purchasing lands or buildings, are to be sent to the commissioners for approval by the secretary of state. (*Id.* s. 45, and see s. 31.)

CLERK TO VISITORS.] The committee of visitors are required to appoint a clerk (*g*) to such visitors, at such salary as they may think fit, with power to remove him at pleasure, and such clerk may be appointed the clerk of the asylum. It is the duty of the clerk to convene meetings of the committee of visitors when required in writing by the chairman, or by two of the visitors, or the superintendent of the asylum, by giving notice to each visitor seven days at least (*i. e.*, clear days) before the meeting. (16 & 17 Vict. ch. 97, ss. 25, 26.) The committee are to sue and to be sued in the name of the clerk. (*Id.* ss. 125, 126.) The clerk acts as the legal adviser of the committee and their officers in connection with the affairs of the asylum.

CHAPLAIN.] The committee are to appoint a chaplain in priest's orders, who may be removed by such committee. (*Id.* s. 55.)

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(*g*) Two clerks are required to be appointed. A clerk to the visitors, and a clerk of the asylum, each of whom is required to perform various duties specified in the Lunacy Acts.

**MEDICAL OFFICER.]** The committee are required to appoint a medical officer who shall be resident in the asylum, and who shall not be clerk or treasurer of the asylum. (*Id.* s. 55.)

The committee may (but it is not incumbent on them so to do) appoint a visiting physician or surgeon, and are required to appoint the medical officer, or one of the medical officers, if more than one, to be the resident superintendent, but may, with the sanction of a secretary of state, appoint any person other than the medical officer, to be such superintendent. (*Id.* s. 55.)

**OTHER OFFICERS.]** The committee are to appoint a clerk of the asylum, a treasurer, and such other officers and servants, as the committee may think fit, with power to remove any officers or servants, and fix their salaries or wages. (*Id.* s. 55.)

The principal duties of the clerk of the asylum are as follows—to report to the commissioners in lunacy the dismissal for misconduct of any nurse or attendant within one week; (16 & 17 Vict. ch. 97, s. 56;) to keep all books, documents, and instruments which the visitors are required to keep—to keep an account of all monies received or paid to or by the treasurer or otherwise—to send in the month of March an abstract of the accounts for the year ending on the previous 31st of December, to the secretary of state, the clerk of the peace, and the commissioners, (*Id.* s. 58,)—to lay his accounts before the committee previously to March, in order that they may be audited and reported to the quarter sessions of counties, and the councils of boroughs; (*Id.* s. 60;)—to transmit to the commissioners a copy of the annual report of the committee within twenty-one days after such report; (*Id.* s. 62;)—to prepare a list of pauper lunatics on 1st January and 1st July, and within fifteen days thereafter to

lay a copy before the visitors, and transmit a copy to the clerk of the peace for every county, and the clerk to the justices for every borough, to which the asylum solely or jointly belongs, and to the commissioners—to send a list of private patients, if any, to the commissioners, and a certificate of the number of each sex to such clerk of the peace and clerk to the justices, (*Id.* s. 63)—immediately on the admission of any lunatic, to make an entry in the “Register of Patients,” and, after the second and before the end of the seventh clear day, to transmit to the commissioners a copy of the order, statement, and certificate, on which the lunatic was received, with a statement, signed, not sooner than two clear days after the admission, by the medical officer; (*Id.* s. 89;) within three days after every visit of two or more commissioners, to transmit to the office of the commissioners a true copy of their observations as entered in the books of the asylum; (*Id.* s. 91;)—in case of the death of any patient, to send notice thereof, with the cause of death, and the name of any person or persons present at the death, within forty-eight hours, to the registrar of deaths and to the commissioners, and also to the relieving officer or overseer of the union or parish to which the patient was chargeable; (*Id.* s. 92;)—in certain cases, to send by post a notice of the death to one of the relatives; (see 25 & 26 Vict. ch. 111, s. 25;)—and within three days after the death, discharge, or removal of any patient, to make an entry thereof in “The Register of Patients,” and in the book required to be kept for the purpose, and to transmit a written notice of the discharge, removal, escape, or recapture of any patient to the commissioners. (16 & 17 Vict. ch. 97, s. 93.)

[ILL-TREATMENT, NEGLECT, &c.] Any superinten-

dent, officer, nurse, attendant, servant, or other person employed in any asylum, who shall strike, wound, ill-treat, or wilfully neglect any lunatic confined therein, may be indicted for a misdemeanor, or on conviction before two justices is liable to a penalty of not exceeding 20*l.*, and not less than 2*l.* (*Id.* s. 123,) recoverable under 12 Vict. ch. 43. (*Id.* ss. 126, 127.) Any officer through wilful neglect or connivance, permitting the escape of any lunatic is liable to the same pecuniary penalty. (*Id.* s. 124.)

SUPERANNUATION.] In case any superintendent, chaplain (*a*), matron, officer, or servant shall become, from confirmed sickness, age, or infirmity, incapable of executing the office in person, or shall have been an officer or servant in the asylum for not less than twenty years (now fifteen years, 25 & 26 Vict. ch. 111, s. 12,) and be not less than 50 years of age, the committee of visitors may, if, in their discretion, they think fit so to do, but not otherwise, grant (subject in the case of a county asylum to confirmation by a resolution of the quarter sessions) an annuity by way of superannuation, proportionate to the merits and time of service, not exceeding the amount of two-thirds of the salary of the officer at the time of retirement, and in calculating the amount, regard may be had to the value of lodgings, rations, or other allowances, the meeting for granting the same being convened as here mentioned. (*Id.* s. 57, and 25 & 26 Vict. ch. 111, s. 12.)

VISITS OF COMMITTEE.] Not less than two members, of the committee of visitors are together once at the least in every two months, to inspect every part of the asylum, and see and examine as far

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(*a*) There is a special provision in 25 & 26 Vict. ch. 111, s. 13, as to cases in which the offices of superintendent and matron are held by man and wife.

as circumstances will permit, every lunatic therein, and the order and certificate for the admission of every lunatic admitted since their last visitation, and the general books of the asylum, and enter in a book kept for that purpose, any remarks in regard to the condition and management of the asylum, and the lunatics therein, and sign the book upon every visit. (16 & 17 Vict. ch. 97, s. 61.)

**VISITS OF GUARDIANS.]** Any physician, surgeon, or apothecary appointed by the guardians or overseers, and also the guardians and overseers may, whenever they see fit, between eight in the morning and six in the evening visit any or every lunatic chargeable to their union or parish, unless the medical officer of the asylum shall sign a statement that such visit will be injurious to any lunatic, with his reasons. (*Id.* s. 65, see also s. 119.)

The superintendent is to make a half yearly report to the guardians of every union and parish, &c. of the condition of every pauper chargeable to such union or parish. (25 & 26 Vict. ch. 111, s. 34.)

**VISITS OF MINISTERS.]** If any patient be of a religious persuasion differing from that of the Established Church, a minister of such persuasion, at the special request of such patient or his friends, shall, with the consent of the medical officer, and, under such regulations as he shall direct, be allowed to visit such patient at proper and reasonable times. (16 & 17 Vict. ch. 97, s. 55.)

**VISITS OF FRIENDS.]** Any commissioner (as to patients confined in any licensed house, hospital, or other place, not being a gaol) or any visitor of a licensed house, may give an order in writing to admit any relations or friends of any patient. (8 & 9 Vict. ch. 100, ss. 84, 85.)

**BURIALS AND REMOVALS.]** The expenses of the burial, discharge, or removal of pauper lunatics are to be borne by the union or parish, if any, to which they are chargeable, or if chargeable to a county, then by such county. (16 & 17 Vict. ch. 97, s. 120. See also 18 & 19 Vict. ch. 105, ss. 11, 12, 13, and as to purchasing burial ground, see 25 & 26 Vict. ch. 111, ss. 9, 10.)

**REMOVAL TO ANOTHER ASYLUM.]** Two visitors of any asylum, being justices, may, by an order (made in duplicate) under their hands, (seals being dispensed with by 18 & 19 Vict. ch. 105, s. 15,) direct any pauper lunatic chargeable to any parish or union within the county or borough to which the asylum wholly or in part belongs, or to such county, and who may be confined in any other asylum, &c., to be removed to such first-mentioned asylum; and any two visitors of any asylum, being justices, may in like manner order any pauper lunatic to be removed from such asylum to some other asylum, &c., with the consent, in certain cases, of two commissioners in lunacy. (16 & 17 Vict. ch. 97, s. 77.) Any two commissioners in lunacy may also order the removal of a lunatic from any asylum to any other asylum. (*Id.* s. 82.)

**DISCHARGE.]** Any three visitors by writing under their hands (see 18 & 19 Vict. ch. 105, s. 15,) may order the discharge of any patient, whether recovered or not, or any two visitors, with the advice in writing of the medical officer, may discharge any person detained in the asylum, or permit him to be absent on trial for such period as they think fit, and make an allowance to such person not exceeding what would be the charge for him if in the asylum. (16 & 17 Vict. ch. 97, ss. 79, 80. See also s. 81, and 18 & 19 Vict. ch. 105, s. 17.)

**PRIVATE PATIENTS.]** Whenever it appears to the



committee of visitors that the asylum is more than sufficient for the accomodation of the pauper lunatics of their county or borough, the committee may, after giving notice by advertisement, permit the admission of pauper lunatics of any other county or borough, and if the committee think fit, of lunatics not paupers. The resolution to admit may be rescinded or varied. (16 & 17 Vict. ch. 97, s. 43.)

GENERAL RULES.] The committee of visitors are required within twelve months after the completion of an asylum, to submit general rules for the government of the asylum to a secretary of state for approval, and such rules, when approved, shall be printed, abided by, and observed; with power, with the like approbation, to alter and vary them from time to time, and the committee are to make regulations and orders (not inconsistent with the general rules) setting forth the number and description of officers and servants, their duties and salaries, and also to determine the diet of the patients, and may, by their regulations, direct any number of beds to be reserved for such cases as shall be therein mentioned, and exclude from admission persons afflicted with any contagious or infectious disease or malady, or coming from any district or place in which any such disease or malady is prevalent. (16 & 17 Vict. ch. 97, s. 53.)

WEEKLY SUM.] The committee are to fix a weekly sum to be charged for the lodging, maintenance, medicine, clothing, and care of each pauper lunatic, of such amount that the same may be sufficient to defray the whole expense of the lodging, maintenance, care, medicine, clothing, and other expenses requisite for such lunatics, and that the total amount, after defraying such expenses, may be sufficient to pay the salaries of officers and attendants, and may alter the amount, as occasion may require. (*Id.* s. 54.)

The committee may fix a greater weekly sum in respect of pauper lunatics other than those sent to the asylum from, or settled in some parish or place in the county or borough to which the asylum belongs: such sum in no case to exceed fourteen shillings a week. And if such sum be found insufficient, then an addition may be made to it by the justices of the county or borough in manner here provided. (16 & 17 Vict. ch. 97, s. 54.)

**COST OF MAINTENANCE.]** A pauper lunatic is for the purpose of the Act to be chargeable to the parish from which, or at the instance of some officer or clergyman of which he has been sent, until such parish shall have established in manner prescribed by the Act that he is settled in some other parish, or that it cannot be ascertained in what parish the lunatic is settled, and an order may be made by justices on the (a) guardians of the union or parish for payment to the treasurer of the asylum of the charges for such lunatic. (*Id.* ss. 95, 96, and Fry, p. 436.)

**LISTS OF LUNATICS.]** The clerk of the board of guardians of every union and of every parish under a board of guardians, and the overseers of every parish not in a union or under a board of guardians, are required on the 1st day of January in every year, or as soon after as may be, to make out and sign a list of all lunatics chargeable to the union or parish in the form contained in the schedule to the Act, and on or before the 1st day of February lay a copy before the visitors, and transmit a copy to the clerk of the peace of the county, or clerk to the justices for the borough within which the union or parish to which each lunatic is chargeable is

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(a) The cost of the examination, removal, and maintenance of pauper lunatics is to be borne by the common fund of the union. (24 & 25 Vict. ch. 55, s. 6.)

situated, to be by him laid before the county quarter sessions, or before the justices for such borough, and a copy to the commissioners in lunacy, and the Poor Law Board, under the penalty of not exceeding 20*l.* (16 & 17 Vict. ch. 97, s. 64.)

**ADDITIONAL LANDS.]** The committee of visitors (with the sanction of the court of quarter sessions, *i. e.* where the council have not assumed the powers of the Act, or the council, where they have done so) may rent either from year to year, or for any term of years, any land or buildings for the employment of the patients or for their temporary accommodation, and such land or buildings, whilst so used, are to be deemed part of the asylum. (25 & 26 Vict. ch. 111, s. 11.)

**RATEABILITY.]** As to the principle on which lunatic asylums are rateable to parochial rates, see 16 & 17 Vict. ch. 97, s. 35, and p. 34, *ante*.

**ANNUAL REPORT.]** The committee of visitors are every year to lay before the justices of the county or borough at the quarter sessions held next after the 20th day of December, or at a special meeting of the justices of the borough to be held within twenty days after that time, a report in writing of the state and condition of the asylum, its sufficiency for the proper accommodation of the lunatics, the management of the asylum, that conduct of the officers and servants, and the care of the patients, with such observations as they may think fit. The clerk to the committee is to transmit a copy of their report to the commissioners in lunacy within 21 days, under the penalty of any sum not exceeding 10*l.* for his neglect so to do. (16 & 17 Vict. ch. 97, s. 62.)

## CHAPTER XXXIII.

### *Of the Borough Gaol.*

OBSERVATIONS.] "The Prison Act, 1865," consolidated and amended the laws relating to prisons, and by the 56th section abolished the distinction between a gaol and house of correction. This statute repealed the whole of the following Acts, *i. e.*, 4 Geo. 4, ch. 64; 5 Geo. 4, ch. 85; 6 Geo. 4, ch. 40; 7 Geo. 4, ch. 18; 3 & 4 Vict. ch. 25; 5 & 6 Vict. ch. 53; 7 & 8 Vict. ch. 50; 7 & 8 Vict. ch. 93; 11 & 12 Vict. ch. 39; and 16 & 17 Vict. ch. 43, (several of which are referred to in previous Acts relating to Municipal Corporations,) and parts of several other statutes. It is not proposed to set out in detail the provisions of the Prison Act, 1865, or the unrepealed enactments of other statutes, but it will be convenient to give an outline of the principal powers and duties of the governing bodies of municipalities, showing the relative duties of the visiting justices, the justices in quarterly session assembled, and the Council.

#### *1st. The Visiting Justices.*

APPOINTMENT.] The justices in sessions assembled are required at their first session in each year to nominate two or more justices, with their consent, to be visitors of each prison within their jurisdiction, with power to declare such nomination to be for the whole year, or to renew the same, or make a fresh nomination

in each succeeding quarter of a year. (28 & 29 Vict. ch. 126, s. 53.)

DUTIES.] From time to time to visit and inspect each prison, and to examine into the state of the buildings, so as to form a judgment as to the repairs, additions, or alterations which may appear necessary, strict regard being had to the requisitions of the Act with respect to the separation of prisoners and enforcement of hard labour.

To examine into the conduct of the respective officers, and the treatment and conduct of the prisoners, the means of setting them to work, the amount of their earnings, and the expenses attending the prison.

To inquire into all abuses within the prison, and to take cognizance of matters of pressing necessity and within the powers of their commission as justices, and regulate the same, and to make a report to the justices in sessions assembled. (*Id.* s. 53.)

The justices in sessions may make rules with respect to the duties of the visiting justices, and from time to time repeal or alter the same. (*Id.* s. 54.)

Any justice having jurisdiction may, whenever he thinks fit, enter into and examine the condition of the prison and of the prisoners therein, and enter any observation as to the condition of the prison or abuses therein in the visitors' book, to be kept by the gaoler, who is to draw the attention of the visiting justices at their next visit to any entries. It is, however, provided that a justice (not being a visiting justice,) shall not be entitled to visit any prisoner under sentence of death, or to communicate with any prisoners except in relation to their treatment, or some complaint made by them as to their treatment. (*Id.* s. 55.)

DISSENTING MINISTERS.] If any prisoner is of a religious persuasion differing from that of the Estab-

lished Church, and (a) no minister has been appointed to attend on prisoners of that persuasion, the visiting justices "shall" permit a minister of such persuasion, to be approved by them, to visit such prisoner at reasonable times, under such restrictions as may be imposed by the visiting justices, to guard against the introduction of improper persons, and prevent improper communications, unless such prisoner expressly objects to see such minister. (*Id.* Regulation 47. See 26 & 27 Vict. ch. 79, s. 3.)

GAOLERS.] The gaoler (or a deputy gaoler,) is not to be absent from the prison for a night without permission in writing from a visiting justice, or, if absent from unavoidable cause, the fact and cause are to be stated in his journal. (*Id.* Regulations, 79, 80.)

PRISON RULES.] The schedule to the Prison Act, 1865, contains a Code of Regulations for the government of prisons, and the 21st section directs the justices in sessions assembled to frame dietary tables and to make additional rules as to other matters with the approval of a secretary of state. The 19th section gives the requisitions of the Act as to hard labour of two classes, and directs that adequate means shall be provided for enforcing it, and under Regulation 38 the visiting justices are to make provisions for the employment of prisoners not sentenced to hard labour, and make rules as to the amount and nature of the employment.

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(a) The 26 & 27 Vict. ch. 79, (called "The Prison Ministers' Act, 1863,") gives power to the persons having the appointment of the chaplain, to appoint a minister to attend on prisoners of their own church or persuasion, when the number is so

great as, in their opinion, to require such ministrations, and to award a reasonable sum as a recompense for his services. This power has been acted upon in some places by the appointment of a Roman Catholic chaplain.

*2nd. Justices in Sessions assembled.*

**DEFINITION OF.]** In a municipal borough "the justices of the borough assembled at sessions to be held by them at the usual time of holding quarterly sessions of the peace, or at such other time as they may appoint." (28 & 29 Vict. ch. 126, s. 6.)

**OFFICERS.]** In every prison the following officers are to be appointed by the justices in sessions assembled, *i. e.*, gaoler, (and where females are confined, a matron,) chaplain, surgeon, and such subordinate officers as may be necessary. The same person may officiate as chaplain for two prisons, if together not calculated to receive more than 100 prisoners. The chaplain cannot in certain cases hold any benefice with cure of souls, or any curacy; and, where required, an assistant chaplain may be appointed. (*Id.* ss. 10, 11, 12.)

**CORPORATE RIGHTS.]** It is provided by the 81st section that nothing contained in the Act shall affect any right vested by Act of Parliament, or charter in the (*b*) council of any municipal borough of appointing

(*b*) This section having given rise to difference of opinion in the city of Bath with respect to the appointment of the gaoler, whether it is in the council, or, as it was previously to the Act, in the bailiff appointed by the corporation under their charter, the opinion of the law officers of the Crown was taken by the Home Office, who advised (see 33 J. P. 474,) that under the charter of that city, the right of

appointment is in the council. This opinion not having been acquiesced in, the question was set at rest by "The Bath City Prison Act, 1871," (34 & 35 Vict. ch. 46), by which the appointment of the gaoler, chaplain, and matron of the prison were vested in the council; such officers, when appointed, to hold office during the pleasure of the justices in sessions assembled.

a gaoler, chaplain, or other officer to the prison of such borough. (*Id.* s. 81.)

TENURE AND SALARY.] Every officer is to hold his office "during the pleasure of the (c) justices in sessions assembled," and to receive such salary as they may direct, subject to the approval of the council in a municipal borough. (*Id.* s. 14.)

RULES.] The justices have power (s. 21) to make rules (in addition to those contained in the schedule to the Prison Act) as to dietary and other matters relating to the government of prisons, with the approbation of a secretary of state, and with respect to the duties of visiting justices (s. 54) to appoint the description of hard labour for hard labour of the first class and of the second class, as defined by the 34th and 35th Regulations. (*Id.* s. 19.)

SUPERANNUATION.] If any officer of a prison has been an officer for not less than twenty years, and is not less than sixty years of age, or becomes incapable from confirmed sickness, age, or infirmity, or injury received in actual execution of his duty, of executing his office in person, and such sickness, &c., is certified by a medical certificate, and there shall be a report of the visiting justices testifying to his good conduct, and recommending a grant, (such report to be made at some sessions held not less than two months before the sessions at which the grant is made,) the justices may grant an annuity, by way of superannuation allowance, having regard to the length of service, of not exceeding two-thirds of his salary and emoluments, or a gratuity not exceeding the salary and emoluments for one year,

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(c) Although the appointment of the gaoler or other officers may, in certain boroughs be vested in the council by virtue of the rights reserved by the 81st section, the power of dismissal will be in the justices only. (Saund. 6.)



payable out of the rates applicable to the payment of salaries; (*i. e.*, the borough fund;) but where the power to levy the rates is vested in a different body from the justices (as in a municipal borough) the consent of such body must be obtained to the amount of the superannuation. (28 & 29 Vict. ch. 126, s. 15.)

ORDER FOR PAYMENT.] To make orders (*a*) on the treasurer of the borough for payment of the salaries of the officers, such salaries having been approved by the Council, as required by the 14th section of the Prison Act, 1865, and for the expenses of the management of the gaol, such orders being subject to the confirmation of the Council. (See 33 J. P. 366, 444.)

### 3. *Of the Council.*

POWERS.] The Council, as "the prison authority," under section 5, are to approve of the salaries of officers; (s. 14;) to sanction superannuation allowances granted by the justices; (s. 15;) and they retain, under section 81, any right vested in them by Act of Parliament or charter of appointing a gaoler, chaplain, or other officer to the prison. (See p. 236, *ante*.)

PRISONS.] The Council may alter, enlarge, or rebuild any prison, or build other prisons in lieu of or in addition to subsisting prisons, and borrow money for the purpose, the necessity having been certified by the recorder, or chairman of the quarter sessions

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(a) The 38th section of 1 Vict. ch. 78, which provided that no order made by the justices for gaol expenses, which required the expenditure or payment of any money, should

be of force until confirmed by the Council, and which in *H. v. York*, 1 E. & B. 588, was held to give a discretion to approve or disapprove, is repealed by the Prison Act, 1865.

where there is no recorder, and in any other case by the presentment of two or more visiting justices, notice of their intention to consider the same having been advertised, and the sanction of the secretary of state having been obtained, as required by the Prison Act. (ss. 24 to 30.) They may also purchase lands for the purpose, (ss. 44, 45,) and sell any unnecessary prisons. (ss. 46, 47. See also 5 & 6 Vict. ch. 98, ss. 3, 5.)

CONTRACTS.] The Council may contract with any other prison authority for the reception and maintenance of all prisoners, or any particular class of prisoners in their prison, such prison having been approved by the secretary of state, public notice of such contract being given. (*Id.* ss. 31 to 34. See also 5 & 6 Vict. ch. 98, ss. 14 to 17.)

GOVERNMENT ALLOWANCE, ETC.] The secretary of state may withhold any government contribution towards the expense of maintaining prisoners, where default is made in complying with the provisions of the Act, and may in certain cases order any inadequate prison to be closed. (*Id.* ss. 35, 36.)

JURISDICTION.] Every prison, wheresoever situate shall, for all purposes, be deemed to be within the limits of the place for which it is used as a prison. (*Id.* s. 57. See also 1 Vict. ch. 78, ss. 40, 41.)

COUNTY CLAIMS.] The Municipal Corporation Act, s. 114, amended by 5 & 6 Vict. ch. 98, s. 18, provides for the payment, in certain cases, to the county (b) of the cost of the conveyance, maintenance, and custody of prisoners when sent to the county prison for

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(b) See 29 & 30 Vict. ch. 100, trial out of the jurisdiction liable as to the expense of the maintenance of prisoners removed for to maintain them.

offences committed within the borough. (See also 15 & 16 Vict. ch. 81, s. 28, and *R. v. Johnson*, 10 A. & E. 740.)

DISQUALIFICATION.] Any person holding the office of mayor, alderman, councillor, or other officer of a Corporation, who shall be interested, concerned, or employed, directly or indirectly, as an architect, builder, artist, mechanic, workman, merchant, trader, or otherwise howsoever in any part of the work to be done, or materials to be supplied at any gaol or house of correction for the borough, or in any contract (c) relating thereto, *i.e.*, for the building enlarging, or repairing, shall thenceforward be disqualified from continuing to hold such office, and also from being thereafter elected or appointed to fill *any corporate office* within the borough. (1 Vict. ch. 78, s. 39. See Rawl. 373.)

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(c) A sub-contract by a councillor does not appear to disqualify if there be no fraud or previous concert, by which he is to have the benefit of the contractor's custom. (*Le Feuvre v. Lankester*, 3 E. & B. 530, p. 114, *ante*.)

## CHAPTER XXXIV.

### *Of "The Elementary Education Act, 1870."*

SCHOOL BOARD.] An application for the formation of a school board may be made by the resolution of the council of a municipal corporation, summoned in the manner in which a meeting is ordinarily summoned, and passed by a majority of the members present and voting on the question. If a resolution be rejected, it cannot be again proposed until the lapse of twelve calendar months from the date of such rejection. Where an application is so made by the council, or where the education department are satisfied as to the insufficiency of elementary school accommodation in the district, the department may cause a school board to be formed, (83 & 84 Vict. ch. 75, s. 12, sch. 2, part 2,) and send a requisition to the mayor for holding the election, and the mayor shall comply with such requisition. The number of members of a school board to be not less than five, nor more than fifteen, as may be determined in the first instance by the education department, and afterwards from time to time by a resolution of the school board approved by the department. (*Id.* s. 31.)

ELECTION.] The election of a school board is to be held at such time and in such manner, and in accordance with such regulations as the education department may, from time to time, by order prescribe; and the poll in a municipal borough is to be taken in like manner as a poll of burgesses taken in the district; and at every such election every voter will be entitled to a number of votes equal to the number of the members of the school board to be elected, and may give all such votes to one candidate,

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or may distribute them among the candidates, as he thinks fit. (*Id.* s. 20). The expenses of the election and taking the poll are to be paid out of the school fund. The elections to be triennial, and the day for the triennial retirement of members is to be the day prescribed by some minute or order of the department; and if any casual vacancy in office occurs by "death, resignation, disqualification, or otherwise" (a), (see s. 34 as to contracts or places of profit, and sched. 2, subsection 14, as to nonattendance,) an election is to be held in manner directed by an order of the education department—a member chosen to fill up a casual vacancy retaining office so long only as the vacating member would have retained the same if no vacancy had occurred. (*Id.* schedule 2, part 1.)

**RATING AUTHORITY.]** The council of Municipal Boroughs (except Oxford) are constituted the rating authority, and the borough fund or borough rate the local rate for the purposes of the Act; and in the district of the local board of Oxford, the local board are the rating authority, and the rate leviable by such board the local rate. (*Id.* s. 4, and schedule 1.)

**SCHOOL FUND.]** The expenses of the school board are to be paid out of the school fund. To this fund all monies received as fees from scholars, or out of monies provided by parliament, or raised by way of loan, or in any manner whatever received by the school board, are to be carried; and any deficiency is to be raised by the school board, in the manner provided by the Act. (*Id.* s. 53)

**DEFICIENCY OF SCHOOL FUND.]** Any sum required to meet any deficiency in the school fund, whether for

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(a) There is no pecuniary, residential, or ratable qualification for members of a school board.

satisfying past or future liabilities, shall be paid by the rating authority out of the local rate. The school board may serve their precept (*b*) on the rating authority, requiring such authority to pay the amount specified therein to the treasurer of the board out of the local rate, and such rating authority shall pay the same accordingly, and the receipt of such treasurer is a good discharge. (*Id.* s. 54.) All precepts to be deemed to be duly executed, if signed by two or more members of the board authorized to sign them by a resolution of the board, and countersigned by the clerk. (Schedule 3.)

If the rating authority have no monies in their hands in respect of the local rate, they shall, or if they shall have paid the amount, then for the purpose of reimbursing themselves, they may, notwithstanding any limit under any Act of Parliament or otherwise, levy the said rate, or any contributions thereto, or any increase of the said rate or contributions, and for that purpose shall have the same powers of levying a rate and requiring contributions as they have for the purpose of defraying expenses to which the local rate is ordinarily applicable. (*Id.* s. 54.)

**DEFAULT OF RATING AUTHORITY.]** If the rating authority of any place make default in paying the amount specified in any precept of the school board, the board, without prejudice to any other remedy,

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(*b*) There is no limitation in the Act as to the amount of rate to be levied. The precept of the school board must be obeyed, whatever may be the rate required to raise the amount. The 97th section of the Act (with respect to the conditions of the parliamentary grant)

was not intended to limit the rate to threepence in the pound, but merely to give a claim in certain cases to an additional parliamentary grant where the sum paid by the rating authority should amount to a sum raised by threepence in the pound.

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may appoint an officer or officers to act within the place, who shall have, for the purpose of defraying the sum due, all the powers of the rating authority of levying the local rate, and also all the powers of making and levying a rate which he or they would have if the place were a parish, and such rate were a rate for the relief of the poor, and he or they were duly appointed an overseer or overseers of such parish. (*Id.* s. 56.)

**BORROWING POWERS.]** Where a school board incur any expense in providing or enlarging a school house, they may, with the consent of the education department, spread the payment over several years, not exceeding fifty, and may for that purpose borrow money on the security of the school fund and local rate, and may charge that fund and the local rate with the payment of the principal and interest due in respect of the loan, and they may, if they so agree with the mortgagee, pay the amount borrowed with the interest by equal annual instalments not exceeding fifty, and if they do not so agree, they shall annually set aside one-fiftieth part of the sum borrowed as a sinking fund. (*Id.* s. 57.)

**INDUSTRIAL SCHOOLS.]** On the election of a school board the council of the borough will cease to have power to contribute under "The Industrial Schools Act, 1866," s. 12, to the support of an industrial school; (*Id.* s. 27;) and a school board may, with the consent of the education department, establish, build, and maintain a certified industrial school. (*Id.* s. 28.)

**GENERAL POWERS OF THE BOARD.]** It would be beyond the scope of a work on the subject of municipal corporations to give the sections of the Elementary Education Act with respect to the powers and duties of school boards.

## CHAPTER XXXV.

### *Of the Alteration of Wards.*

**ORIGINAL DIVISION**—(*under 5 & 6 Will. 4, ch. 76.*)—It was provided by the Municipal Corporations Act, (5 & 6 Will. 4, ch. 76,) that every borough in schedule A. should be divided into the number of wards mentioned in such schedule in conjunction with the name of such borough; and the barristers appointed to revise the burgess and councillors' lists in the year 1835 were required, within six weeks after the Act, to determine and set out the extent, limits, and boundary lines of such wards, and what portions of the borough should be included therein—the divisions to be subject to the approval of Her Majesty. (M. C. 39.)

After the division of the borough into wards, the barristers were required to apportion among the several wards the number of councillors mentioned in the schedule, having regard as well to the number of persons rated to the relief of the poor in the wards as to the aggregate amount of the sums at which all the said persons should be so rated; (*Id.* s. 40;) with power to divide any of the said boroughs in conjunction with the name of which any number of wards greater than two were mentioned, into any number of wards more or less by one, than the number of wards so mentioned, (*Id.* s. 41,) and to require the production of any rate books. (*Id.* s. 42.)

**Power of (a) Alteration**—(*under 22 Vict. ch. 35.*)—If two-thirds in number of the council of any borough shall agree to petition, and the council shall thereupon petition Her Majesty for the division of such borough into wards, or for the alteration of the number

(a) Considering the great increase in the population of the wards of many large boroughs since 1835, and the probability that it will lead to a new division of such boroughs into wards, we have thought it desirable to give a full epitome of the provisions of the Acts relating to this subject.



and boundaries of the wards into which any borough is or from time to time shall be divided, it shall be lawful for Her Majesty from time to time, if she shall think fit, by advice of Her Privy Council, to fix the number of wards into which such borough shall be divided; and every borough shall be divided into the number of wards mentioned in the order in council made on such petition; provided nevertheless that notice of every such petition, and of the time when it shall please Her Majesty to order that the same be taken into consideration by Her Privy Council, shall be published in the "London Gazette" one month at least before such petition shall be so considered. (22 Vict. ch. 35, s. 1.)

The senior judge, or, in case of his absence from the kingdom, the next judge in the commission of assize for the summer circuit next after any such order in council shall have been made, shall appoint a barrister for the purpose of determining the boundaries of such wards, and apportioning the number of councillors of the borough among such wards as thereafter mentioned. (*Id.* s. 2.)

The provisions of sections 39, 40, and 42, and so much of section 43 (as to the election of councillors and assessors) as remained unrepealed, of 5 & 6 Will. 4, ch. 76, to extend to any such division of a borough into wards, or to any such alteration of the number and boundaries of the wards into which any borough is or may be from time to time divided, and the same sections and also the provisions of section 10 of 7 Will. 4, and 1 Vict. ch. 78 (as to councillors going out of office,) and of sect. 10 of 16 and 17 Vict. ch. 79 (as to the mayor appointing a substitute in the case of the illness or incapacity of an alderman in certain cases,) shall apply to every election after such division or alteration, and the barrister so to be ap-

pointed shall have all the powers, rights and privileges mentioned in sections 39, 40, and 42 of the said Act of 5 & 6 Will. 4, c. 76; and the costs and expenses thereby occasioned shall be paid and discharged, and such barrister shall be remunerated at the rate of five guineas for every day he shall be so employed, over and above his travelling and other expenses, out of the borough fund. (*Id. s. 3.*) (a)

AMENDMENT OF 22 VICT. CH. 35.] When any borough consisting of less than four wards, shall at any time hereafter be divided into a greater number of wards, the qualification for an alderman or councillor of such borough shall not be increased or altered in consequence of such division, but shall continue the same as if such borough consisted of less than four wards. (32 & 33 Vict. ch. 55, s. 4.)

FURTHER AMENDMENT.] On the division of any borough into wards, the revising barrister shall apportion all the councillors for such borough amongst the wards into which it shall have been so divided; and in case of the alteration of the number and boundaries of the wards of any borough already divided into wards, the revising barrister shall apportion the councillors for the wards so altered amongst the new wards in such manner as to provide, so far as may be practicable, for such councillors continuing to represent as large a number as possible of their former constituents, and every councillor for the borough so divided, or for the wards so altered, as the case may be, shall hold his office in the ward to which he may be assigned by the revising barrister for the same time that he would have held it, had the said borough or wards remained undivided or unaltered. (34 & 35 Vict. ch. 67, s. 2.)

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(a) The fourth section is not given, as it was repealed by 34 & 35 Vict. c. 67, s. 2.

## CHAPTER XXXVI.

### *Of the Contagious Diseases (Animals) Act, 1869.*

**CONSOLIDATION ACT.]** The Act of 32 & 33 Victoria, chapter 70, consolidated the laws relating to contagious or infectious diseases among cattle, sheep, and other animals. It is not, however, thought desirable to give the provisions of this Act with great minuteness. This chapter will, therefore, be confined to an outline of the principal duties imposed on local authorities, with a reference to some of the (a) offences created by the Act.

**LOCAL AUTHORITY.]** The local authority for carrying out the provisions of the Act is, in boroughs, the mayor, aldermen, and burgesses acting by the council, the town-clerk being their clerk; and the borough fund or borough rate the fund out of which expenses are to be paid. Where the borough is not subject to the Act of 5 & 6 Will. 4, ch. 76, the commissioners or other body maintaining the police therein, are the local authority, their clerk is the clerk for the purposes of the Act, and the rate applicable to the maintenance of the police the fund for payment

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(a) Some doubt exists whether justices have any summary jurisdiction for the enforcement of penalties under this Act, in consequence of there being no express enactment to this effect. (See Stone's Justices' Manual, 15th Ed. p. 156).

The question will shortly be decided; a case for the opinion of the Court of Queen's Bench having been granted on 3rd November, 1871, by the Kirkdale Quarter Sessions, (35 J. P. 730.)

of expenses. In the (a) metropolis the Board of Works, and in the district of the local board of Oxford, the Local Board are the local authority. (32 & 33 Victoria, ch. 70, sect. 9.)

COMMITTEES.] A local authority "shall" form a committee or committees, and may delegate to any such committee or committees all or any powers conferred on the local authority, except the power to make a rate; and may from time to time revoke or alter any power given to a committee, and appoint and designate any such committee as their executive committee. (*Id.* s. 11.) The executive committee may appoint sub-committees, with or without conditions or restrictions, fix the quorum and lay down rules for their guidance. Their proceedings are not to be invalidated by any vacancy, and the regulations contained in the 3rd schedule are to apply to committees and sub-committees. (*Id.* s. 11.) Under these regulations, the committee may consist wholly of members of the local authority, or partly of such members, and partly of rated occupiers in the district qualified in such manner as the local authority may determine. Every question is to be decided by a majority of the votes of the members present and voting, and the chairman has a casting vote.

INSPECTORS AND OFFICERS.] The local authority shall from time to time appoint so many inspectors and other officers as appear to them to be necessary for the execution of the Act, with such duties, salaries or allowances as they think fit; and may at any time revoke any appointment, "but so that every local authority shall at all times keep appointed at least one

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(a) The provisions applicable to the metropolis are not referred to in this chapter.

250 *Contagious Diseases (Animals) Act, 1869.*

inspector." (*Id.* s. 12.) Inspectors may be removed by the Privy Council for incompetency or misconduct; (*Id.* s. 13;) and local authorities and inspectors are to make such reports to the Privy Council as they may require. (*Id.* s. 14.)

FOREIGN ANIMALS.] The regulations as to ports, and the landing, reception, sale, and slaughter of foreign animals, are contained in sections 15 to 30, and in the 4th Schedule, but are too numerous and of too limited an application for insertion in this Manual.

DISCOVERY OF DISEASE.] An inspector on receiving information of the supposed existence of cattle plague, pleuro-pneumonia, or sheep-pox, or having reasonable ground for suspecting that any of these diseases exists in any place in his district, must proceed there with all practicable speed, and execute the duties conferred on him. (*Id.* s. 31.) An inspector or other authorized officer may enter any field, stable, cowshed, or premises where he has reasonable grounds for supposing that any animal so affected is to be found, but shall, if required, state in writing the grounds on which he has so entered; and any person refusing admission is guilty of an offence against the Act. (*Id.* s. 32.) The certificate of an inspector, as to an animal being so affected, is conclusive evidence of the matter certified. (*Id.* s. 33.)

INFECTED PLACES.] The Act contains a variety of provisions as to the course to be adopted in declaring districts to be "infected places," and imposes special duties in such cases on the local authority, the inspector and constables of the district. (*Id.* ss. 34 to 53, and 6th Schedule.)

OFFENCES.] The exposure in any market or fair, or other public place where such animals are commonly

exposed for sale, or the exposure for sale in any sale-yard, whether public or private, or placing in a lair or other place adjacent to a market or fair, or sending by railway, or causing to be carried, led, or driven on a highway or thoroughfare, any horse or animal affected with a contagious or infectious disease (*a*), are offences against the Act, unless it be shown to the satisfaction of the justices that the party complained against did not know of the same being so affected, and could not with reasonable diligence have obtained such knowledge. (*Id.* s. 57). Any such horse or animal so dealt with may be seized by an inspector or other officer, who may cause it, if affected with glanders (*b*), cattle plague, or sheep pox, to be slaughtered, and, if affected with any other contagious or infectious disease, to be removed to some isolated place, and there kept for such time as the local authority may think expedient, the expenses thus incurred being recoverable from the owner or from the consignor or consignee who may recover the same from the owner. (*Id.* s. 57.)

Horses or animals that have died, or been slaughtered in consequence of being affected with glanders, cattle plague, or sheep-pox, are to be buried as soon as possible in their skins in manner required by this section. (*Id.* s. 60.)

POWERS.] The local authorities shall cause all animals affected with cattle plague within their district to be slaughtered; (*Id.* s. 65,) and, if they think fit, any animal that has been in the same shed or herd, or in contact with any animal so affected, (*Id.* s. 66,) and

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(*a*) Placing any animal affected with a contagious or infectious disease in any uninclosed land, or insufficiently fenced field or place, or on the side of a highway, is also an offence under the 58th section.

(*b*) The 61st section provides for the purification of sheds, &c., of diseased animals.

they may order any animal affected with disease suspected to be cattle plague, to be slaughtered in order to ascertain the nature of the disease. (*Id.* s. 67.) The owner in such cases (except where otherwise provided by the Act, see sect. 71,) to receive compensation not exceeding 20*l.*, and not exceeding one-half of the value of the animal immediately before it was affected with cattle plague; (*Id.* s. 68;) and such sum not exceeding 30*l.* as may be equal to three-fourths of the value of any animal slaughtered on account of having been in the same shed or herd with a diseased animal. (*Id.* s. 69.) The local authority may require the value of any animal slaughtered to be ascertained by officers of the local authority or by arbitration, and may impose conditions as to the evidence of slaughter and the value. (*Id.* s. 70.)

EXPENSES.] The expenditure in compensation for slaughtered animals, and in respect of the principal and interest of money borrowed, is to be defrayed out of the local rate, or a separate rate levied in like manner as the local rate, the tenant being allowed to deduct one-half of the rate out of his rent, with a special provision (sect. 101,) as to Cheshire. (*Id.* s. 89.) Other expenses are to be defrayed out of the local rate, (*Id.* s. 90,) with power to remit the rate in the case of persons who, before the 20th February, 1866, suffered so great a loss by cattle plague as in the opinion of the local authority entitled them to remission in whole or in part. (*Id.* s. 91.) Where the rate required would exceed sixpence in the pound, a local authority may borrow on security of the rates, repaying the same within seven years; but if it would exceed ninepence in the pound, the period of repayment may be extended by the treasury to fourteen years. (*Id.* s. 98.) When it exceeds the amount of a rate of one shilling in the pound, the loan commissioners may lend the same on

such terms as provided by the Act, the amount to be repaid by not exceeding thirty annual instalments, (*Id.* s. 99,) with special provisions as to the repayment of existing debts. (*Id.* s. 100.)

PENALTIES.] Any person acting in contravention of, or guilty of any offence against the Act, or any order or regulation made by the Privy Council, or a local authority, is liable (unless otherwise provided by the Act, or a less penalty be mentioned in any such order or regulation) to a penalty of not exceeding 20*l.*, but when the offence is committed with respect to more than four animals, a penalty of not exceeding 5*l.* may be imposed for each animal, (instead of 20*l.*) and a further penalty of not exceeding 10*l.* for every half ton in weight of offal, dung, litter, &c., where the offence is committed in relation to offal, &c. (*Id.* s. 103.) In certain cases, as, for instance, not obtaining a license when required, or for using a license after it has expired, or fabricating or altering a license, or making a false declaration, &c., the offender may be imprisoned for not exceeding three months, with or without hard labour, in lieu of a pecuniary penalty. (*Id.* s. 104.) One half of the penalty is to be paid to the informer and the other applied as if this section had not been enacted. (*Id.* s. 106.) Any person who feels aggrieved by the dismissal of a complaint, or by any adjudication of the justices, may appeal to the quarter sessions, subject to the conditions contained in this section. (*Id.* s. 108.)

JURISDICTION.] Every offence is to be deemed to have been committed, and every cause of complaint under the Act or any order or regulation of the Privy Council or local authority to have arisen either in the place in which the same was actually committed or arose, or in any place in which the person charged or complained against happens to be. (*Id.* s. 109.)



## CHAPTER XXXVI.

### *Of Proceedings by Mandamus.*

**POWER OF VISITATION.]** It is an incident to all corporations that they are liable to be *visited*; that is, that any irregularities which may arise in them from time to time may be inquired into and arrested by some competent authority.

In ecclesiastical corporations, for example, the ordinary is, by the canon law, the visitor. In eleemosynary lay corporations the founder, his heirs, or assigns, are, at common law, the visitors. But in civil lay corporations, including municipal corporations, as their existence is derivable from the crown, the power of visitation is vested therein.

This power of visitation in the crown, in regard to municipal corporations, is exercised by the court of Queen's Bench, according to the rules of the common law; and it is chiefly exercised by means of the writ of *mandamus*, or of an information in the nature of a *quo warranto*. (Arn. 247.)

**MANDAMUS.]** A *mandamus* is a high prerogative writ, and is, in form, a command issuing in the Queen's name, directed to any person, or corporation, or inferior court of judicature, within the crown's dominions, requiring them to do some particular thing therein specified, which appertains to their office and

duty, and which the court of Queen's Bench has previously determined, or at least supposes to be consonant to right and justice.

In its application, it may be considered as generally confined to cases where relief is required in respect of the infringement of some *public* right or duty, and where no effectual relief can be obtained in the ordinary course of an action at law. (Arn. 248.)

WHEN GRANTED.] A *mandamus* will lie to compel the corporation to proceed to the election of corporate officers, or the admission of a freeman; or to restore any officer, such as recorder, town-clerk, or clerk of the peace, or any member of the corporation who has been turned out, or disfranchised, or suspended. (Selwyn, N. P. 1084.) It will lie also, by statute, to insert the name of a person in the burgess-list; whose claim has been rejected, or whose name has been expunged at the revision of the burgess lists; (1 Vict. ch. 78, s. 24,) and the *mandamus* is not necessarily peremptory in the first instance. (*R. v. Ege*, 9 A. & E. 670.)

The writ does not lie unless the office be one of a permanent nature, and therefore it will not be granted in the case of an office held during pleasure. (*Evans v. Heart of Oak Building Society*, 13 Jur. (N. S.) 163.)

In the case of an office, however, if it be already full by the possession of an officer *de facto*, a *mandamus* will not be granted to proceed to a new election until the person in possession has been ousted upon proceedings in *quo warranto*.

Thus, where a councillor had, *during his term of office*, been left off the burgess list by the overseers for alleged non-payment of rates, but continued to exercise the office, the court determined that they would

not, on affidavit of these facts, issue a *mandamus* to the mayor to proceed to a new election, as the vacancy must be first ascertained by a judgment on a *quo warranto* information. (*R. v. Phippen*, 7 A. & E. 968. See *R. v. Oxford*, 6 A. & E. 349.) It is indeed stated to be an inflexible rule that when the office is full, unless the election can be shown to be merely colorable, the remedy to try the right to the office is by *quo warranto* and not by *mandamus*. (*R. v. Chester*, 25 L. J. Q. B. 61.)

A *mandamus* will lie to compel a corporation to fix their seal to a public document, to hold a meeting at which public business is to be transacted, such as the granting of corporate leases; or to a corporate officer, for the production, inspection, or delivery of public books and papers; the delivery of the corporate insignia, and in like cases. (Arn. 249.)

The time within which the application must be made is generally regulated by the practice of the court; but in the case of an application by a burgess to have his name inserted in the burgess list, it is expressly required to be made before the end of the term next following the Act complained of. (1 Vict.-ch. 78, s. 24.)

The general course of proceeding is; (see Arn. 249.)

The party who applies for the writ does so upon a suggestion, supported by oath, of his own right, and the refusal to do the act required to be enforced.

A rule is first granted directing the party complained of to show cause why the writ should not issue. If he shows no sufficient cause, or does not submit at once to the application, the writ is issued in the alternative to do the act, or show some reason to the con-

trary, to which an answer or *return* must be made by a certain day.

If the party to whom the writ is directed makes no return, he is punishable by attachment as for a contempt. If a return is made and the prosecutor wishes to object to it, he must demur; and if it is insufficient in law a peremptory *mandamus* is awarded; obedience to which will also be enforced by attachment. If the return is disputed by the applicant, or prosecutor, as being false in fact, he may traverse it; and if an issue is raised upon a point of fact, it may be tried before a jury, and if judgment is obtained by the prosecutor, a peremptory *mandamus* will also issue in this case.

In order to expedite proceedings in *mandamus*, as far as they affect *corporate offices* in boroughs, it has been enacted by 6 & 7 Vict. ch. 89, s. 5, that the party making the application may give a written notice to the party to be affected by the writ ten days before making the application, stating the name and description of the applicant, and the grounds of the application, accompanied with a copy of the affidavits in support of the same; whereupon the opposite party may show cause in the first instance, and if no sufficient cause be shown the court may, if they think fit, make the rule for the *mandamus* absolute, or grant a peremptory *mandamus* in the first instance.

It has been held that neither a burgess (*R. v. Milner*, 5 Q. B. 589,) nor a coroner (*R. v. Grimshaw*, 5 Dowl. & L. 249,) holds a *corporate office* within the meaning of this section, which applies only to the governing officers of a corporation.

A writ of error may be brought upon a judgment in *mandamus*, but no action or other proceeding will lie

against any person for anything done in obedience to a peremptory *mandamus*. (6 & 7 Vict. ch. 67, ss. 2, 3, and 15 & 16 Vict. ch. 76, s. 148.)

COMMON LAW PROCEDURE ACT.] It is enacted by 17 & 18 Vict. ch. 125, s. 76, that an application by motion for a writ of *mandamus* may in all cases be made absolute in the first instance; and by section 77, that the provisions of the Acts of 1852 and 1854, so far as the same are applicable, shall apply to the pleadings and proceedings upon a prerogative writ of *mandamus* issued by the court of Queen's Bench. (See Selwyn, N. P. title "*Mandamus*.")

## CHAPTER XXXVII.

### *Of Proceedings by Quo Warranto.*

NATURE OF WRIT.] A writ of *quo warranto* is in the nature of a writ of right for the crown, against any one who claims or usurps any office, franchise, or liberty, to inquire *by what warrant*, or authority, he supports his claim, in order to determine the right.

An *information*, in the nature of a *quo warranto*, may be brought with leave of the court, at the relation of any person desiring to prosecute the same, who is then styled the *relator*, against any person usurping, intruding into, or unlawfully holding any franchise or office in any borough corporate; and the statute of 9 Anne, ch. 20, provided for the speedy determination of the information, and directed that if the defendant be convicted, judgment of ouster, as well as fine, might be given against him, and that the relator should pay or receive costs according to the event of the suit. (Arn. 253.)

WITHIN WHAT TIME.] In ordinary cases an information must be applied for and exhibited within six years after the swearing in of a party to any office; in the case, however, of a mayor, alderman, councillor, or burgess, the application must be made within twelve months (a) after the election, or the disqualification, of

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(a) A continuing contract is a disqualification, *de die in diem*, so that the application may be made against a councillor, although more than twelve months

shall have elapsed from the commencement of the disqualification. (*R. v. Francis*, 21 L.J. Q. B. 304.)

the person against whom the application is made, as expressly required by 1 Vict. ch. 73, s. 23, and 6 & 7 Vict. ch. 89, s. 1.) But even though the application be made within the limited period, the court will not grant it as a matter of right, if it appears there has been an unreasonable delay in making the application. Thus, where a person was enrolled a burgess in November, and an application for a *quo warranto* was made on the last day of the following Hilary Term, the court refused a rule, as no explanation was given of the delay. (*R. v. Hodson*, 4 Q. B. 648. See also *R. v. Prece*, 5 Q. B. 94.)

The relator in an information for a *quo warranto* against a councillor will not be allowed to show that certain persons whose names were on the burgess roll were not entitled to vote, the burgess roll being conclusive evidence of the qualification to vote. (*R. v. Tugwell*, 33 J. P. 101.) The application against a burgess or councillor must be made promptly. (See *R. v. Hodson*, 4 Q. B. 648; and *R. v. Hindmarsh*, 17 L. T. (N. S.) 176.)

RELATOR.] It is not necessary that the relator should be a *burgess*; it will be sufficient if he is an *inhabitant* of the borough, and subject to the control and government of the council; (*R. v. Parry*, 6 A. & E. 848; *R. v. Quayle*, 11 A. & E. 508;) although it seems if he is not a member of the corporation, the court will require a stronger case to be made out before they will give leave to file the information. (*R. v. Ogden*, 10 B. & C. 210; and *R. v. Lloyd*, Rawl. 355; *R. v. Parry*, 6 A. & E. 810; *R. v. Greene*, 2 Q. B. 460, Arn. 250.)

When the application is made by *individuals*, and not by the corporation, or their representative, the

mayer, the court will exercise a large discretion in granting a rule for an information, with reference to all the circumstances of the case, and particularly as to the promptness of the application, and the conduct and even the motives of the relator. (Arn. 255.)

WHEN GRANTED.] In no case will the court grant an information unless it is made clearly to appear that the office is full *de facto*. It will not be sufficient to state merely that the party "has accepted the office;" but it must be shown in what manner he has done so; as that he has made the requisite declaration; (see *R. v. Slatter*, 11 A. & E. 505; *R. v. Quayle*, 11 A. & E. 508; *R. v. Leeds*, Id. 512; and *R. v. Armstrong* 26 L. T. 248;) or that he has acted in a corporate capacity, or the like.

A *quo warranto* may be granted for an usurpation of an office even after the resignation of it; for the resignation is no answer, though it may regulate the decision of the court in imposing the fine.

One ground upon which the court frequently refuses to grant a rule for the information is, that the relator has acquiesced or concurred in the election of the party against whom the application is made; but it is no objection that the relator has frequently acted with the party in corporation business, it not appearing that he had actually concurred in the election, (Arn. 256)

In some cases where collusion is suspected, the court will order the relator to give security for costs. (*R. v. Wakelin*, 1 B. & Ad. 50; and *R. v. Greene*, 4 Q. B. 696.)

The court will not grant leave to file an information against an individual member of a corporation, where the object of the application is obviously to call in question the validity of the charter to the corporation. (*R. v. Taylor*, 11 A. & E. 954.)



PROCEDURE.] The proceedings (*b*) in *quo warranto* may be carried on in the same manner as in the case of a *mandamus*, and notice of the intended application to the court must be given as directed by 6 & 7 Vict. ch. 89, s. 5.

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(*b*) The mode of procedure, pleadings, evidence, and judgment, and the cases in which the court will grant the information are fully set forth in Selwyn's N. P., title "*Quo Warranto*." The provisions of the Common Law Procedure Act, 1852, as regards writs of error, do not apply to informations in the nature of "*quo warranto*." (*R. v. Seale*, 24 L. J. Q. B. 221.)

## APPENDIX.

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### THE MUNICIPAL FRANCHISE ACT, 32 & 33 VICT, CAP. 55.

THE Municipal Franchise Act of 32 & 33 Vict. ch. 55, which is entitled "An Act to shorten the Term of Residence required as a Qualification for the Municipal Franchise, and to make Provision for other Purposes," is as follows:—

"Whereas it is expedient to shorten the term of occupation and residence required as a qualification for the Municipal Franchise, and to make provision for other purposes:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; that is to say,

1. The ninth section of the Act of the session of the fifth and sixth years of King William the Fourth, Sect. 9 of 5 & 6 WILL. 4, c. 76, repealed. shall be repealed, and instead thereof be it enacted, that every person of full age who on the last day of July in any year shall have occupied any house, warehouse, counting-house, shop, or other building, within any borough during the whole of the preceding twelve calendar months, and also during the time of such occupation shall have resided within the One year's occupation to entitle persons to Municipal Franchise.

said borough, or within seven miles of the said borough, shall, if duly enrolled in that year according to the provisions contained in the said Act of the session of the fifth and sixth years of King William the Fourth, chapter seventy-six, and the Acts amending the same, be a burgess of such borough and member of the body corporate of the mayor, aldermen, and burgesses of such borough: Provided that no such person shall be so enrolled in any year unless he shall have been rated in respect of such premises so occupied by him within the borough to all rates made for the relief of the poor of the parish wherein such premises are situated during the time of his occupation as aforesaid, and unless he shall have paid on or before the twentieth day of July in such year all such rates, including therein all borough rates, if any, directed to be paid under the provisions of the said Acts, as shall have become payable by him in respect of the said premises up to the preceding fifth day of January: Provided also, that the premises in respect of the occupation of which any person shall have been so rated need not be the same premises or in the same parish, but may be different premises in the same parish or in different parishes: Provided also, that no person being an alien shall be so enrolled in any year, and that no person shall be so enrolled in any year who, within twelve calendar months next before the said last day of July, shall have received parochial relief or other alms: Provided also, that the respective distances mentioned in this Act shall be measured in the manner directed by section seventy-six of the Act of the session of the sixth and seventh years of Queen Victoria, chapter eighteen.

6 & 7 Vict.  
c. 18.

Saving  
rights under  
existing  
burgess roll.

2. Nothing in this Act contained shall affect any existing burgess roll, but every such roll shall continue in force until the first day of November one thousand eight hundred and sixty-nine.

Councillor or  
alderman  
may reside  
within fif-  
teen miles of  
borough.

3. Any such occupier as aforesaid, who shall be rated in respect of premises as in this Act mentioned, shall be entitled to be elected a councillor or an alderman of any

borough, if resident within fifteen miles of said borough, although by reason of his residence beyond seven miles of the borough he is not entitled to be on the burgess roll of such borough, provided that he is otherwise qualified to be on the burgess roll, and to be elected a councillor or an alderman for such borough, and the following enactments shall take effect with respect to such occupiers :

1. The overseers shall make out and publish a separate list containing the name of every such occupier at the same time and in the same manner as the burgess list, and all the provisions of the said Act of the fifth and sixth William the Fourth, chapter seventy-six, and the Acts amending the same with respect to objections and claims shall, as nearly as circumstances admit, apply to such separate list.
2. The separate list so made out shall be revised in the like manner as the burgess list, and when so revised shall be delivered to the town clerk, and copied as a separate list at the end of the burgess roll.
4. When any borough, consisting of less than four wards, shall at any time hereafter be divided into a greater number of wards, the qualification for an alderman or councillor of such borough shall not be increased or altered in consequence of such division, but shall continue the same as if such borough consisted of less than four wards.
5. From and after the passing of this Act no person shall be deemed to have had or to have an interest in a contract or employment with, by, or on behalf of the council of any borough by reason only of his having had or having a share or interest in any railway company or in any company incorporated by Act of Parliament or by Royal Charter, or under "The Companies Act, 1862," and no councillor, alderman, or mayor in any municipal corporation shall be deemed to have been or to be disqualified to be elected or to be such councillor

Qualification for aldermen and councillors.

Proprietors of shares in companies not to be deemed contractors, &c., and not to be disqualified from election to municipal offices by reason of such holding.

alderman, or mayor by reason only of his having had or having any share or interest in any railway company or in any company incorporated by Act of Parliament or Royal Charter, or under "The Companies Act, 1862," but all elections of councillors, aldermen, or mayors as aforesaid shall be deemed and taken to have been and to be valid, notwithstanding any such share or interest as aforesaid.

Who may  
nominate for  
office of  
auditor and  
assessor.

6. At any election of auditors, revising assessors, or ward assessors, any person entitled to vote may nominate for the office of auditor or assessor, in like manner as such person can nominate for the office of councillor under and by virtue of the provisions in that behalf contained in the twenty-second Victoria, chapter thirty-five, and the proceedings in relation to such nomination and election shall be in all respects the same as are prescribed in the said Act in relation to the election of councillors.

Time for  
receipt of  
nominations.

7. Every nomination for the office of councillor, assessor, or auditor must be sent to the town-clerk, so that the same shall be received in his office before five o'clock in the afternoon of the last day on which any such nomination may by law be made.

Elections  
to supply  
extraor-  
dinary  
vacancies.

8. If an extraordinary vacancy shall happen in the office of assessor, and at the same time a vacancy shall exist or arise in the office of councillor which cannot be legally filled up before the vacant office of assessor has been or can be by law filled up, the election to supply such vacant office of councillor shall be held before the alderman of the ward, or the mayor where the borough is not divided into wards, the continuing assessor, and such burgess (not being a burgess representing or enrolled on the burgess list for that ward, if the borough is divided into wards), as the mayor shall by writing under his hand appoint.

Words im-  
porting the  
masculine  
gender to  
include  
females.

9. In this Act and the said recited Act of the fifth and sixth years of King William the Fourth, chapter seventy-six, and the Acts amending the same, wherever words occur which import the masculine gender, the

same shall be held to include females for all purposes connected with and having reference to the right to vote in the election of councillors, auditors, and assessors.

10. This Act shall be construed as one with the said Act of the session of the fifth and sixth years of King William the Fourth, chapter seventy-six, and the Acts amending the same, except so far as the same are altered or repealed by this Act, and the words used in this Act shall have the same meaning as in the said Acts.

11. This Act shall not apply to Scotland or Ireland.”

*Extent of Act.*



## APPENDIX OF FORMS.

---

### 1.—NOTICE OF ELECTION BY TOWN CLERK.

---

BOROUGH OF L , IN THE COUNTY OF L , (to wit).

---

*Election of Councillors for the                      Ward in the said  
Borough of L*

---

#### TAKE NOTICE.

1. That an election of two councillors will be held for the said ward, on the day of , A. D. 187 , in the said ward.

2. That any person entitled to vote may nominate for the said office himself (if duly qualified), or any other person or (a) persons so qualified, not exceeding two in number.

3. That every such nomination must be in writing, and must state the Christian names and surnames of the persons nominated, with their respective places of abode and descriptions.

4. That any nomination paper must be signed by the party nominating, and may be in the following form, or to the like effect:—

---

(a) In notices for the election of one councillor, or of auditors or assessors, alter the form so as to adapt it to the nomination of one person only. The form can be readily altered in the case of boroughs not divided into wards.



## NOMINATION PAPER (b).

*Election of Councillors for the      Ward, in the Borough*  
*of L      , to be held on the      day of      A.D.*  
 187 .

Christian Name and Surname of Person Nominated.	Place of abode of person nominated.	Description of person nominated.	Christian Name and Surname of Nominator.	Address of Nominator.

Dated the      day of      , A. D. 187 .

(Signed)

5. That all nomination papers must be delivered to the town clerk, on or before (c), the      day of      instant, and must be sent so that the same shall be received at the office of the town clerk before five o'clock in the afternoon of the said day.

Dated this      day of      , A. D. 187 .

(Signed,)

S. S.,

*Town Clerk.*

---

(b) Nomination papers in this form must be printed by the town clerk, and delivered to burgesses applying for the same.

(c) Here state the day, which will be two clear days (exclusive of Sunday) before the day of election.

**2.—NOTICE OF ELECTION ON EXTRAORDINARY  
VACANCY (WITHOUT FIXING POLLING  
PLACE).**

BOROUGH OF L .

No. \_\_\_\_\_ Ward.  
\_\_\_\_\_

We, the undersigned, being the alderman and assessors of the \_\_\_\_\_ Ward in the borough of L , do hereby give notice that the election of one councillor for the said ward, in the room of Mr. J. B., who has resigned the office of councillor, will be held on the \_\_\_\_\_ day of \_\_\_\_\_ instant, and that if more than one person shall be nominated for the said office, under the provisions of "The Municipal Corporation Act, 1859,"(d) due notice will be given of the place or places within the said ward at which the poll will be taken.

Given under our hands this \_\_\_\_\_ day of \_\_\_\_\_ 187 .

A. B., Alderman.

C. D. }  
E. F. } Assessors.

**3. NOTICE OF ELECTION AND OF POLLING PLACE  
ON EXTRAORDINARY VACANCY.**

BOROUGH OF L .

No. \_\_\_\_\_ Ward.  
\_\_\_\_\_

We, the undersigned, being the alderman and assessors of the \_\_\_\_\_ Ward, in the borough of L , do hereby give notice, that the election of a councillor for the said ward, in the room

---

(d) In notices for the election of Auditors and Assessors, add "and of the Municipal Franchise Act of 32 & 33 Victoria chapter 55."

of Mr. J. P., now an alderman (or, *as the case may be*), will be held on the day of instant, and that if more than one person shall be nominated for the office of councillor for the said ward under the provisions of "The Municipal Corporation Act, 1859," the voting will commence at nine o'clock in the forenoon—and that the poll will be taken at St. Margaret's Vestry Hall, Humberstone Gate, in two compartments, namely :—No. 1, for burgesses whose surnames commence with the letter *A* to *F* inclusive; No. 2, for burgesses whose surnames commence with the letter *G* to *N* inclusive; and at St. George's school-room, Rutland Street, for burgesses whose surnames commence with the letter *O* to *Z* inclusive.

Given under our hands this            day of            187 .

*A. B.* Alderman.,

*C. D.* }  
*E. F.* } Assessors.

#### 4. APPOINTMENT OF DEPUTY ALDERMAN.

##### BOROUGH OF L .

I, *A. B.*, Esquire, mayor of the said borough, do hereby appoint *C. D.*, one of the aldermen of this borough, to act in the room of *E. F.*, one of the aldermen of the said borough, on the day of instant, at the election of a councillor for the

Ward in the said Borough, in the room of Mr. *C. H.*, who has been elected an alderman [or, *as the case may be*], the said *E. F.*, the alderman of the said ward being incapacitated from acting by reason of sickness (or "absence," *as the case may be*).

Dated this            day of            187 .

*A. B.*,  
Mayor.

## 5. NOTICE OF APPOINTMENT OF POLLING PLACES.

## BOROUGH OF L .

NOTICE IS HEREBY GIVEN, that the aldermen and assessors of the several wards within the borough of L have appointed the poll on the first day of November next, for the election of Councillors for each of the several wards within the said borough, (in the event of a poll being required for any of such wards) to be taken at the several places hereunder mentioned (that is to say) :—

	Number of Compartments.	
For the first, or Saint Martin's Ward - -	1	At the Town Hall.
For the second, or North St. Margaret's Ward - - - . .	2	At the Girls' School-room, Canning Place, for burgesses whose surnames commence with the letter <i>A</i> to <i>J</i> inclusive, and at the Infant School, Archdeacon Lane, for burgesses whose surnames commence with the letter <i>K</i> to <i>Z</i> inclusive.
For the third, or Middle St. Mar- garet's Ward . .	4	At Christ's Church School-rooms, Bow Street, in two compartments, namely :—No. 1, for burgesses whose surnames commence with the letter <i>A</i> to <i>D</i> inclusive; No. 2, for bur- gesses whose surnames commence with the letter <i>E</i> to <i>K</i> inclusive; at the Ragged School-room, Carley Street, for burgesses whose surnames commence with the letter <i>L</i> to <i>R</i> inclusive; and at the Infant School, Lee Street, for burgesses whose sur- names commence with the letter <i>S</i> to <i>Z</i> inclusive.
&c.	&c.	&c.

And NOTICE IS HEREBY GIVEN, that the voting at the said election will commence at nine o'clock in the forenoon.

Dated this      day of      , 187 .

S. S.,  
Town Clerk.

## Borough of L

No.	Word.
-----	-------

Given under our hands this            day of        187 .

	A. B.	- Alderman.
	C. D.	} Assessors.
	E. F.	

## Borough of L

In case of an equality of votes between two candidates, the alderman and assessors, or any two of them, must give the casting vote, and they are requested to do so by writing the name of the person for whom they vote on one\* and the same paper (5 & 6 Will. 4, ch. 76, ss. 35, 43.)

(a) The alderman and assessors of the ward will preside at compartment No. 1.

If a vote be objected to, any two burgesses entitled to vote in the borough may, under section 34 of the 5 & 6 Will. 4, ch. 76, require all or any of the following questions to be put to the voter, and if answered satisfactorily the vote must be taken.

- 1.—Are you the person whose name is signed as *A. B.* to the voting paper now delivered in by you?
- 2.—Are you the person whose name appears as *A. B.* on the burgess roll now in force for this borough, being registered therein, as rated for property described to be situated in (here specify the street, &c. as described in the burgess roll?)
- 3.—Have you already voted at the present election? . .

If any voter tenders his or her vote, and it appears that some other person has already polled in his or her name, the vote can be accepted as a *tender* only, and should not be counted at the close of the poll. It may thus be available in the event of the office being contested in the Court of Queen's Bench, and the votes being scrutinized.

A burgess may sign a voting paper with his surname and the initial of his or her Christian name, and it is desirable, if not essential, that a voter should deliver in one voting paper only with the names of the persons for whom he or she votes.

The *place of abode* of the person voted for must be stated in the voting paper—the place of business not being sufficient.

The poll will commence at 9 o'clock, A. M. and close at 4 o'clock, P. M. (5 & 6 Will. 4, ch. 76, s. 32), or at any time before 4 P. M. if one hour shall have elapsed during which no vote shall have been tendered for any candidate at *any of the polling places* for the ward, and no person shall have within the last hour been prevented from coming to the poll by riot, violence, or other unlawful means, of which notice shall have been given to the returning officer. (1 Vict. ch. 78, s. 18.)

S. S.,  
Town Clerk.

## 8.—VOTING PAPER

BOROUGH OF L .

First day of November, 187 .

---

Ward.

Christian Name and Surname of the Persons Voted for.	Place of Abode of the Persons Voted for.	Description of the Persons Voted for.
<i>A. B.</i> .. ..	Fosse Road ..	Newspaper Proprietor.
<i>C. D.</i> .. ..	4, Cheapside ..	Grocer.

I vote for the above-mentioned persons to be councillors of the Ward, in this borough.

Signed *E. F.*

The place where the property for which I appear to be rated on the Burgess Roll is situated, and in respect of which I vote is,

8, Baker Street.

*N. B.*—It may be convenient to add the situation of the polling places, thus:

The places of voting will be at Saint Margaret's Vestry Hall, Humberstone Gate, in two compartments, namely:—No. 1, for burgesses whose surnames commence with the letter *A* to *F* inclusive; No. 2 for burgesses whose surnames commence with the letter *G* to *N* inclusive; and at Saint George's School-room, Rutland Street, for burgesses whose surnames commence with the letter *O* to *Z* inclusive.

The poll will open at nine o'clock in the morning.

Number on Ward List (*a*), 656.

---

(*a*) It will greatly facilitate the poll if the number of the Burgess on the Ward List is written on the voting paper, but this cannot be required by the Presiding Officer.

9.—COMPUTING SHEET.

(WHERE THERE ARE (a) FOUR CANDIDATES.)

*Ward.*

No.

Compartment.

G. to N.

Number of Papers.	Candidates.	Robinson.	Brown.	Smith.	Jones.
	For Robinson and Brown				
	„ Robinson and Smith				
	„ Robinson and Jones				
	„ Robinson - - -				
	„ Brown & Smith -				
	„ Brown & Jones -				
	„ Brown - - - -				
	„ Smith & Jones -				
	„ Smith - - - -				
	„ Jones - - - -				

We hereby certify that the number of votes taken at this Compartment (No. ) is as follows :—

For Mr. Robinson

„ Mr. Brown

„ Mr. Smith

„ Mr. Jones

Dated this            day of            187 .

Presiding Officer at Compartment No.

Poll Clerk.

(a) This Form shows the various modes in which votes may be given where there are four candidates. It can be readily adapted to a poll with any other number of candidates. The column for the number of voting papers will be useful in testing the accuracy of the sheet.



# 10.—DECLARATION OF RESULT OF ELECTION (WITHOUT POLL).

BOROUGH OF L .

No.      Ward.

We, the undersigned, alderman and assessors of      Ward, in the borough of L , do hereby give notice that two persons (or "one person") only, (namely) (*here describe the persons or person nominated as in the nomination paper*) have (or "has") been nominated for the office of councillor for the said ward at the present election, being the same as the number to be elected. And we hereby publish and declare that the said A. B. and C. D. (or A. B.) have (or "has") been and are (or "is") accordingly elected councillors (or "councillor") for the said ward (*if an extraordinary vacancy, say, "in the room of deceased," or "in the room of      who has accepted the office of alderman," or, as the case may be*), pursuant to the provisions of "The Municipal Corporation Act, 1859." (a)

Dated this      day of      187 .

E. F. Alderman.

G. H. } Assessors.  
I. K. }

# 11.—DECLARATION OF RESULT OF ELECTION (AFTER POLL).

BOROUGH OF L .

No.      Ward.

We, the undersigned, being the alderman and assessors of Ward, in the borough of L , do hereby declare that A. B. of , and C. D. of (*describing the persons elected as in the nomination paper*) have been duly elected as

---

(a) In the case of auditors or assessors add, "and The Municipal Franchise Act of 32 & 33 Vict. c. 55."

councillors for the said ward at the election held before us this day.

Given under our hands this       day of       187 .

*E. F.* Alderman.

*G. H.* }  
*I. K.* } Assessors.

STATE OF THE POLL.

PERSONS VOTED FOR.	NO. OF VOTES.

12.—TOWN CLERK'S NOTICE TO PERSON ELECTED.

L. , 187.

Sir,

I hereby give you notice that on the       day of  
instant, you were duly elected to the office of councillor  
(*or, as the case may be,*) for       Ward in this borough, and  
that you are required by law to take upon yourself the said office,  
and to make and subscribe a declaration of the acceptance thereof  
within five days after notice of your election, before two of the  
aldermen or councillors of the said borough, and that in case you  
make default in so doing you will be liable to pay the fine of  
imposed by the Bye-law in that behalf, and that such  
office will thereupon be deemed to be vacant.

Two aldermen or councillors will attend at the Town Hall, in  
this borough, on       , the       day of       instant, at  
o'clock in the forenoon, to receive your declaration.

I am, Sir,

Your obedient servant,

*S. S.,*  
*Town Clerk.*

**13.—NOTICE OF DEATH OF COUNCILLOR.**


---

TO THE TOWN CLERK OF THE BOROUGH OF L. .

Sir,

We hereby give you notice that Mr. *A. B.*, one of the  
councillors of the      Ward in the borough of L. , died  
on the      day of      instant.

Dated this      day of      , 187 .

*C. D.* } Burgesses of the  
*E. F.* } said ward.

---

**14.—NOTICE OF RESIGNATION.**


---

TO THE COUNCIL OF THE BOROUGH OF L. , AND TO THE  
TOWN CLERK OF THE SAID BOROUGH.

I hereby give you notice that I have paid the fine of      to  
the treasurer of the borough of L. , on my resignation of  
the office of councillor for the      Ward, as required by the  
Bye-law of the said borough, and I hereby resign such office  
accordingly.

I send herewith the receipt of the Treasurer for the fine so  
paid by me.

Dated this      day of      , 187 .

*J. B.*

---

**15. SUMMONS FOR MEETING TO ELECT MAYOR AND  
FOR OTHER GENERAL BUSINESS.**

BOROUGH OF L. .

Sir,

I hereby summon you to a quarterly meeting of the council of  
this borough, to be held at the Town Hall, on      , the ninth day  
of November instant, at twelve o'clock at noon, for the business

hereunder-mentioned, and for any general business which may be transacted at such quarterly meeting.

I am, Sir,

Your obedient Servant,

Town Clerk.

November, 187 .

---

BUSINESS.

**MAYOR.**—To elect a Mayor for the ensuing year.

**DEPUTY MAYOR.**—To receive and record in the minutes the appointment of deputy mayor.

**OFFICERS.**—To appoint the officers of the borough for the ensuing year.

**COMMITTEES.**—To appoint the various committees, viz. :—

The Estate Committee,

„ Watch „

„ Finance, &c. „

and any other committees that may be thought necessary, and to fix the quorum, and define the duties.

**QUARTERLY MEETINGS.**—To appoint three quarterly meetings for the ensuing year.

**ALDERMEN OF WARDS.**—The councillors of the several wards to appoint aldermen of wards for the ensuing year.

**ESTATE.**—To receive and consider the report of the Estate Committee as to sales, memorials to the Treasury and conveyances of property; notices to quit to tenants, and any other matters relating to the estate.

**ACCOUNTS AND RATES.**—To receive and consider the report of the Finance Committee; to order the payment of bills and accounts audited by such committee; to make an estimate of the borough rates and watch rates required for the ensuing year, and to order a borough rate and watch rate (a).

---

(a) The mayor will sign a notice of every meeting commencing "Notice is hereby given, that a quarterly (or "special") meet-

**COMMITTEES.**—To receive and consider reports from any committees of the council.

**MAINTENANCE OF PRISONERS.**—To make the return to Government of the expense and maintenance of convicted prisoners, and of the cost of prosecutions.

**COMMON SEAL.**—To seal conveyances of property sold or purchased by the corporation—securities for loans—and any deeds, contracts, memorials, or instruments requiring the common seal.

## 16. APPOINTMENT OF DEPUTY MAYOR.

### BOROUGH OF L

I, *A. B.*, esquire, mayor of the borough of L, in pursuance of "The Municipal Corporation Act, 1853," do hereby appoint *C. D.*, esquire, one of the aldermen of the said borough, to act as the deputy mayor of the borough during my illness or absence, and I do hereby signify such appointment to the council of the said borough.

Dated this       day of       187 .

*A. B.*,  
Mayor.

ing of the council of the borough of L will be held, &c., (as stated in the summons). It is not absolutely necessary for the town clerk to give notice of the general business to be transacted at a quarterly meeting, nor for the notice by the mayor, either of a quarterly or special meeting, to contain any statement of the business to be transacted, although it is desirable for the information of the public that this should be done.

Several of the matters of business mentioned in this summons are not necessarily to be transacted at the quarterly meeting in November. The next meeting for the election of aldermen in the room of those who retire will be the 9th November, 1874.

17.—VOTING PAPER FOR ALDERMEN.

BOROUGH OF L .

ELECTION OF ALDERMEN.

9th November, 187 .

Christian and Surname of Persons Voted for.	Place of abode.	Description.
<i>A. B.</i> .. ..	High Street ..	Grocer.
<i>C. D.</i> .. ..	Knighton .. ..	Manufacturer.
<i>E. F.</i> .. ..	Gallowtree Gate	Draper.
&c.	&c.	&c.

I vote for the above mentioned persons as aldermen of this borough.

(Signed) *G. H.*

To the Chairman.

[Affix Penny Stamp.]

18.—APPOINTMENT OF ALDERMAN OF WARD.

BOROUGH OF L .

No.          Ward.

We, the undersigned, being councillors of        Ward, in the borough of L , do hereby appoint Mr. *A. B.*, one of the aldermen of the said borough, to be alderman of the said ward for the year ending on the ninth day of November next, in pursuance of the provisions of the Act of 5th and 6th William the Fourth, chap. 76.

Dated        day of        187 .

} Councillors of  
the said Ward.



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\* The justices for every county or place having separate quarter ses-  
sions, are at the quarter sessions held in January, 1870, to determine  
whether it is necessary that the office of high constable of each hundred  
should be continued, and may, where a discontinued constable suffers  
any loss of emolument or salary heretofore chargeable upon the county  
rate, grant compensatory pensions. (32 & 33 Vict. ch. 47.)

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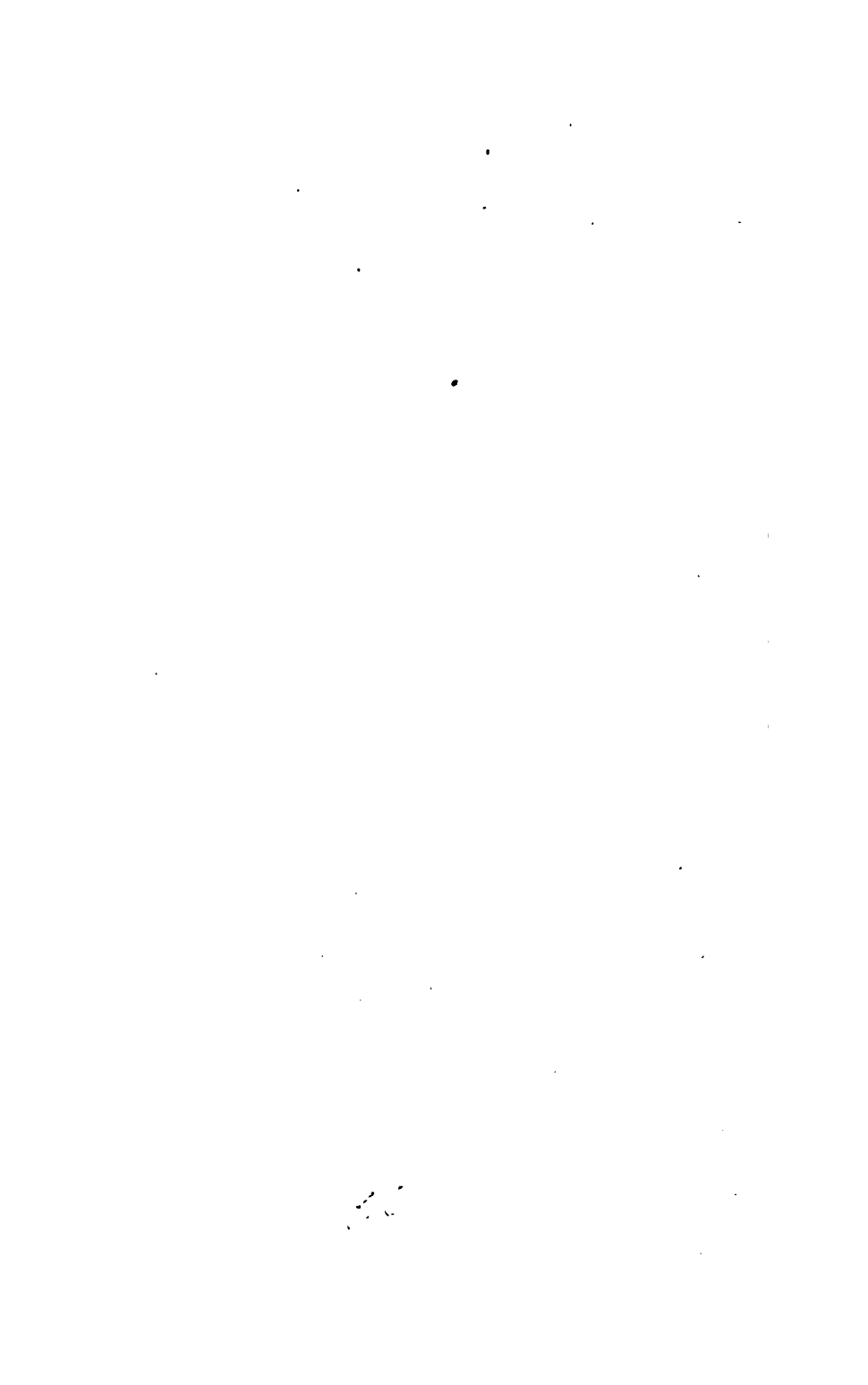
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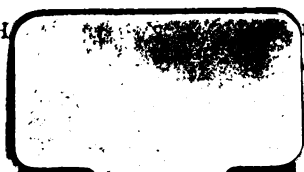
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